

(APPROVED: 09/09/09)

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
JUNE 10, 2009**

*\*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. \*\**

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***Due to technical difficulty in the recording of this meeting,  
portions of this meeting are deemed inaudible,  
as noted throughout these minutes.***

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**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Joseph Kalipi at approximately, 12:18 p.m., Wednesday, June 10, 2009, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

A quorum of the Commission was present. (See Record of Attendance.)

**B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE**

Mr. Kalipi: So at this time, we're gonna go down to agenda item letter B and we will accept public testimony on any planning or land issue. If you need to go back to work, or if you have any concern of any land issue, we wanted to give you this opportunity to testify. Please come up. Again, state your name for the record before you testify. And just a reminder, if you have any cell phones or pagers, please set them on vibrate at this time. Thank you.

Mr. DeGray Vanderbilt: Aloha, Chair Kalipi and Members of the Planning Commission. I just wanted to say briefly so you don't get lost in the shuffle, I left a handout for you which includes when I went over to Maui, I got copies of the zoning map. I don't have the keys on there, but I -- the package includes some zoning maps and also the 1984 and 2001 community plan layouts for Maunaloa, Kualapuu industrial center, Kaunakakai. Also includes --

Mr. Kalipi: Excuse me, sir, before you go on, could you state your name for the record?

Mr. Vanderbilt: Oh, yeah. Thanks, Joe. DeGray Vanderbilt, Molokai resident. The next thing was just something I put together which came out of the General Plan the community plan of the Maui County Code emphasizing everywhere that all zoning ordinances, land uses, and everything must be consistent with the intent of the community plan. The next

two items were the proposed changes that I had mentioned last time to the two ordinances that's on one sheet of paper and attached to each of the -- each of those is the letter from -- the memo from the Planning Director regarding those ordinances. And the last thing is an excerpt from the -- this is a great document that was put together by our community in 2006 called the *Molokai Responsible Tourism Initiative*, and I took out some excerpts from that. And basically the purpose of that was to show that where our tourism is going and there's marketing efforts and what they see for the future in tourism for Molokai ...(inaudible)...

Mr. Kalipi: Thank you, DeGray. Okay, anyone else would like to testify at this time? Okay, seeing none, we're gonna close this time of public testimony. And if you wanna testify ...(inaudible)... Under C, Communications, we have before us today, Mr. Jeffrey Hunt, Planning Director requesting concurrence from the Molokai Planning Commission, a special management area rules, as amended. We're gonna have Nancy to give us a quick review.

## **C. COMMUNICATIONS**

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that Special Management Area (SMA) exemptions can be issued for the following:**

- a. Antone Ledesma House Addition  
SMX 2008/0510  
TMK: 5-7-003: 081  
10601 Kamehameha V Highway  
Waialua, Island of Molokai. (N. McPherson)**

**Requesting concurrence with recommendation for exemption from SMA Rules for construction of an addition to an existing 2,078 square foot (1,782 square foot of living area and 296 square feet of deck), two-story single family dwelling consisting of a first floor extension of an existing open deck to become a covered deck and enlarging of the existing master bedroom over the first floor open deck, 12' x 27', on a one (1) acre, previously developed residential lot with two existing dwellings. There will be minimal excavation for post and pier foundation.**

***The Commission may act on whether or not to concur with the Planning Director's determination that an SMA exemption be issued.***

Ms. Nancy McPherson: Okay, good afternoon, Commissioners. Thank you, Chair Kalipi. Nancy McPherson, Staff Planner. This is an SMA assessment that was submitted for a deck extension and bedroom expansion down at -- it's past Wailua River. I'm hoping that you got color -- color exhibits, but if you didn't, then we have -- at least I put subject parcel on the TMK maps, so I'm hoping that you had a chance to look at those, and know where this house is located. It's a parcel that already has two existing homes on it. And I wanted to let you know that Mr. Ledesma is here today. So he can answer any questions that you might have. The exhibits for the plans are from old blueprints. That's why the quality is a little difficult to read. But this is a straightforward expansion to a two-story, single family dwelling. There will only be four pier excavations to a maximum depth of eight inches. So they're expanding it out and then they're gonna put four post and piers to support the deck expansion. It's not on the shoreline. It's not in the flood zone. And I did consult with State Historic Preservation. And I'm just realizing that that was the one thing that I needed to copy for you for this meeting. So I do have the SHPD letter saying that it's been determined that it will have no effect. If you need to see a copy of that, I didn't have it at the time that this was submitted, but I do have a copy of that. I can run and make copies for you if you need to see the letter. So this is determined to be not development. It's an addition to -- or structural or non-structural improvements to existing single-family residences where otherwise permissible. And I'm requesting that you concur with our recommendation for exemption, and approve this SMA exemption for Mr. Ledesma. And it's in the rural zoning. Any questions for myself or Mr. Ledesma?

Mr. Kalipi: Commissioner Sprinzel?

Mr. John Sprinzel: ...(inaudible)...

Ms. McPherson: Yes, there is an existing cesspool. My understanding was that this would not trigger a required upgrade per Department of Health. That's what I was told.

Mr. Sprinzel: Who told you that?

Ms. McPherson: Well, the -- who told me that? I think it was the person who's assisting Mr. Ledesma - Luigi Manera. So my understanding was -- because see that would've -- that would be triggered by building permit also. So my understanding was that replacing the cesspool with septic was not required because there's not going to be a bathroom or anything like that. There's not gonna be another bedroom. It's just an expansion. You know, I can double check that for you, if you'd like additional information.

Mr. Kalipi: Okay, any more questions for Nancy?

Ms. Lori Buchanan: Nancy, on this, maybe Mr. Ledesma, you might wanna answer this, I only gonna ask on Exhibit 13, b and c, Nancy, because at least I can see that. I don't

know, I wasn't exactly sure from Item No. 1, you actually extending. You not just enclosing an existing porch area? You actually going out some more, yeah?

Ms. McPherson: Yeah, Mr. Ledesma is extending it by a number of feet, and covering the deck, and then enlarging the bedroom over the deck.

Ms. Buchanan: Okay, and is that the reference you make, "and enlarging the master bedroom over -- " now this is on Page 1, "12 by 27"?

Ms. McPherson: Yes.

Ms. Buchanan: Okay. So the existing deck going be enlarged. And then after that enlargement is made, the upstairs master bedroom going be extended to match that?

Ms. McPherson: Yes.

Ms. Buchanan: Okay. And that's in the front of the house, not the back the back of the house?

Ms. McPherson: Right.

Ms. Buchanan: So on Exhibit 13b, on the bottom left, that would be the project area?

Ms. McPherson: Yes.

Ms. Buchanan: Okay. So that going come out, you get some more -- the deck going come out to measure 12 by 7, and then on the on top? So all of that going be enclosed, then?

Ms. McPherson: Yes.

Ms. Buchanan: Yeah, all enclosed. Okay. And on Exhibit 13, to the rear of the house, nothing's changing there, yeah?

Ms. McPherson: Correct.

Ms. Buchanan: Okay. Thank you.

Mr. Kalipi: Commissioner Chaikin?

Mr. Steve Chaikin: Yeah, I basically have no questions or comments. I just wanted to thank you, Nancy, for highlighting the subject property in red. It made it a lot easier to find that little parcel on the map, so thank you.

Ms. McPherson: I do it at that scale because sometimes the location of the home within the ahupua`a is of interest to Commissioners, so I like to put it in its context. But in some cases, that means drawing back a little bit.

Mr. Kalipi: Okay, if no more questions from Commissioners to Nancy, we're gonna open the floor for public testimony. Okay, seeing none. Thank you, Nancy. At this time, we're gonna open the floor with any public testimony on this matter. Okay, seeing none, we're gonna close this time of public testimony. Then I'm gonna turn to the Commissioners to either some discussion or entertain a motion from the floor.

Ms. McPherson: We do have a concern from Commissioner Sprinzel and I'm not really sure how you will choose to proceed to assist Commissioner Sprinzel in addressing his concern. If I need to find out more about the Department of Health's cesspool versus septic issue, then I'm going to need more time, and you'll have to defer this item.

Mr. Chaikin: Thank you, Nancy. Commissioner Sprinzel, there's only five Commissioners present today, so we're gonna need unanimous consent in order for us to make any action today. Do you have any items that you need to deal with before we move forward with a motion?

Mr. Sprinzel: I'm happy to accept the cesspool.

Ms. McPherson: Commissioner, I will make sure that that's an item on my checklist that I confirm before I bring an item to the Commission in the future.

Mr. Kalipi: Okay, with that said, I'm gonna entertain a motion from the floor.

Mr. Chaikin: Yeah, I don't think this particular project's gonna have any significant adverse impact to the SMA, so I'm willing to put out a motion on the floor that we concur with the Planning Department to exempt this application from the SMA permitting process.

Mr. Kalipi: Okay, so we got a motion by Commissioner Chaikin, second from Commissioner Sprinzel.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Chaikin, seconded by Mr. Sprinzel, then unanimously***

***VOTED: to exempt this application from the SMA permitting process.***

Mr. Kalipi: Unanimous. Motion carried. Thank you, Commissioners.

Ms. McPherson: Thank you, Commissioners.

Mr. Kalipi: Okay, at this time, we are going down our agenda, and we're in Section D, Unfinished Business, and we will call Mr. Jeffrey Hunt on this meeting to our agenda item, Planning Director transmitting Council Resolution, 09-22 containing a draft bill to amend Section 19.24.020 and 19.26.060 relating eliminating the stacking of B-1, B-2, and B-3 uses in the M-1 light industrial district and the M-2 heavy industrial district as well as eliminating apartment houses from the list of uses in the M-1 light industrial. Again we have Planning Director Mr. Hunt.

#### **D. UNFINISHED BUSINESS**

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-22 containing a Draft Bill to Amend Section 19.24.020 and 19.26.060 relating eliminating the stacking of B-1, B-2, and B-3 uses in the M-1 Light Industrial District and the M-2 Heavy Industrial District as well as eliminating "apartment houses" from the list of uses in the M-1 Light Industrial District. (RFC 2009/0029) (J. Alueta) (Public hearing conducted at the May 27, 2009 meeting. Commissioners: Please bring your documents.)**

*The Commission may take action on this request.*

Mr. Jeffrey Hunt: Thank you, Chair. At the last meeting, we discussed these Council initiated bills. They are initiated by the Council. The intent, from our perspective, and, again, we didn't write this so we're just interpreting this, there's a concern that industrial lands are becoming not available for industrial uses again taken over by businesses. So, specifically, the bills would eliminate the provision that is currently in our industrial zones that allows any uses in the business district and also it would eliminate apartments in the light industrial zoning. Based on concerns that the Planning Department has about pre-existing uses, our official recommendation is to file this bill and to have the Planning Department draft a new pure industrial M-3 zone, which would be just industrial uses unless there's ancillary and accessory businesses directly associated with that industrial use.

At the last meeting, DeGray -- Mr. Vanderbilt proposed some changes and even, I understand, supports the bill. And if the Planning Commission wants to go down that road, we can help you craft a recommendation. I don't think we would have any objection to that. I do think you need to recognize there are some existing uses and existing businesses in Molokai's industrial zoned areas and that those should be grandfathered in so that they're ...(inaudible)... We can craft that language, if that's where you want to go. It does get a little tricky. Right now, you have a Veterans Center that is being proposed on interim

zoned land, but the community plan is light industrial. During the update of the community plan, the Planning Department is gonna be suggesting the community plan map that you adopt that will be in the back of your community plan that we simultaneously adopt the zoning map that implements or matches the community plan map designations. So it's potentially or it's even likely I would say that the industrial zoned lands, unless they're changed to business or something, the Veterans Center would be in industrial zone lands at that point. If you pass this anti-stacking bill, that would become a nonconforming use. So again, it's tricky. It's not as simple -- not as simple as that. We do recognize that Molokai is different from Maui and you're concerned with not having available industrial lands may not apply on Molokai and you may want to take a different approach. And if that's the case, we're the professional staff. We're here to help you. We do have a map available. This map was an attempt by our Long Range Division to show the existing industrial zoned lands. In talking to Clayton, who is as much of an expert on Molokai as anyone I know, he pointed out a couple of errors on the map because the map didn't show the more recent zone changes. So I've penned those in. So I'll pass this around.

But really, what's the driving force on land use designations is your community plan and that's what I think you should look at is the community plan designations, and I can pass around this map if you don't have your own. And just for the public's information, for the record, the industrial zoned lands right now are in Maunaloa, there's a little tiny portion there, across from the old hotel; Kualapu'u, I guess it was an old industrial use that is now part of the coffee plantation; the Swenson's at the bend in the highway; the business park has industrial uses, and then there's some industrial uses in what I would just describe as behind the Pizza Café, towards ...(inaudible)... So those are your areas that are community plan. I'll pass around the map so you can see existing zoning but again, the community plan is more the driver for the long range. For the immediate effect, yes, the zoning is the tool; for the long range, it would be the community plan.

Ms. Buchanan: Director Hunt, I got a question. You said - I wanted clarification - you said community plan. What it said in the community plan is not necessarily implemented on this plan or on your zoning maps, and I referring to the area behind the Pizza Café as well as the Molokai Ranch industrial park. Is that legally zoned light industrial because it's not on the map that we got from DeGray?

Mr. Hunt: Yes, I believe both of those are -- well, as I understand it, the land behind the Pizza Café is mostly, the light industrial community plan, is mostly zoned interim. And, likewise, a large portion of the -- or a portion of, I won't say large or small, but a portion of the business park is zoned interim; a portion of it is zoned light industrial or industrial ...(inaudible)...

Mr. Kalipi: Anymore questions from the Commissioners? Commissioner Chaikin.

Mr. Chaikin: Yeah, I was just wondering, that map that you're passing around here, which is I guess the County zoning, does it mirror pretty closely to the -- to the community plan? I mean I know that you just said that there was a conflict there but what about all the rest?

Mr. Hunt: It mostly reflects the community plan except for those interim areas in the business park and behind the Pizza Café.

Mr. Kalipi: Commissioner Sprinzel.

Mr. Sprinzel: Director Hunt, is there a possibility we could get ...(inaudible)...

Mr. Hunt: We can give that map to -- to Nancy so it would be part of the Planning Department's library sort to speak. Was that your question?

Mr. Sprinzel: ...(inaudible)...

Mr. Hunt: Well that map that is right there only shows the industrial zoning. It's not a -- it's not a zoning map for the whole island. It was just produced to this project.

Mr. Chaikin: I'll ask a question just to better understand this whole light industrial concept. Just from trying to figure it out, does light industrial basically mean you can do just about anything other than say hotel or heavy industrial?

Mr. Hunt: Under your classic light industrial, it would be more of a manufacturing and a storage use that doesn't have the classic noxious -- noxious byproducts, you know, the smokestack ...(inaudible)... so you're still manufacturing or storing, it's just that you're not producing noise, the smoke. What happened in Maui County is we have the stacking situation where we allow businesses. So the answer to your question in Maui County, you're allowed virtually any business in industrial zones and along with manufacturing and storage and other industrial uses.

Mr. Chaikin: And doesn't that move beyond that and all the way through the whole residential spectrum from apartments to single-family residences and all that also allowed in light industrial?

Mr. Hunt: In the light industrial because apartments are allowed, but in the heavy industrial, apartments aren't allowed.

Mr. Chaikin: Okay, and I did read something about that you can actually have a single-family in the light industrial?



Mr. Hunt: The single-family's allowed in the business district and because business is -- or uses in the business district are allowed in industrial districts. Clayton, correct me if I'm wrong.

Mr. Chaikin: Yeah, that's what I read too. I mean I was coming to the conclusion, in light industrial, you can do just about anything. I was trying to figure out what you couldn't do. I mean you can't build a hotel, I don't think that's going to be allowed in light industrial, and the heavy industrial stuff seemed like, you know, a lot of stuff can be built under that zoning classification. I just wanted to clarify that.

Mr. Hunt: Yeah, I think that's fairly accurate. The concern seems to be - I mean there's the zoning and then there's the reality, and the reality is it's mostly businesses that are locating in industrial zones and that is generating a concern that we're not -- that we don't, particularly on Maui Island, we don't have the available inventory for industrial uses so then they get pushed out into other zones or out into the agricultural districts as a special use. That's ...(inaudible)... so we kind of look at the ...(inaudible)... I mean, again, on Molokai, it's very likely it would be a different situation.

Mr. Kalipi: Commissioner Bacon.

Mr. Bacon: ...(inaudible)...

Mr. Hunt: There's four categories in the State: agriculture, conservation, rural, and urban. So for your businesses uses and industrial uses, they'd have to be on urban ...(inaudible)... and that's for preexisting.

Mr. Kalipi: Commissioner Sprinzel.

Mr. Sprinzel: Could we request that ...(inaudible)...

Mr. Hunt: So, as I understand it, your recommendation would be to file the bill, however, if Council wishes to adopt it, add a provision that exempts Molokai from -- from that change?

Mr. Sprinzel: Yes.

Mr. Hunt: Yes, I believe you have the ability to recommend that and we can work with you on that language if that's what ...(inaudible)...

Mr. Sprinzel: Thank you.

Mr. Kalipi: Corp. Counsel.

Mr. Hopper: I mean I think you would just wanna say, in that situation, file it and they would be aware of your recommendation ...(inaudible)... So you can say file it. But if you don't file it ...(inaudible)...

Mr. Kalipi: ...(inaudible)... if we make the recommendation on that.

Mr. Hopper: They always have the option to say "except for Molokai" ...(inaudible)...

Mr. Sprinzel: Or we would -- we would be saying we won't file it for Molokai?

Mr. Hopper: Yeah, I mean you're only making recommendations for the Molokai Planning Commission.

Mr. Sprinzel: ...(inaudible)...

Mr. Hopper: Right. So you're saying file it but if you don't file it, we want you to file it.

Mr. Sprinzel: Okay, thank you.

Mr. Hunt: I would almost maybe narrow your recommendation and say that you don't want it on Molokai. You don't want this bill to be effective on Molokai regardless of what they do on Maui. You get into this file it but if you don't file it - it get's real confusing and it's hard for staff and sometimes we get ...(inaudible)... like the superstore bill, we actually misrepresented your recommendations, you know, it was an honest mistake, but it just gets confusing after ...(inaudible)... bills and recommendations ...(inaudible)... so the simpler the better.

Mr. Kalipi: Okay, anymore discussion? Commissioner Buchanan.

Ms. Buchanan: I guess the question we had when we deferred it to this meeting, there was a few questions ...(inaudible)... and part of that was coming back with the maps of what areas would be affected on Molokai and the current zoning of light industrial, and I knew was very small. I knew that was very small. And so it's been substantiated that the area that will be affected by this on Molokai is very small. So I don't anticipate any real impacts. I didn't look closely at Maunaloa. And I wanted to thank DeGray for bringing the maps in, however, the largest parcel, which I was wondering about, was the Molokai Ranch industrial park, which is not on your map, DeGray, cause I really don't think it was zoned light industrial. I really think it's zoned interim and so I haven't seen anything to substantiate that they're going to be affected except everybody -- maybe the community plan designates it as light industrial. I asked the question the last time that the Planning Department wants to file this and come up with a new M-3 zone and so jumping ahead, if Maui County made up a new M-3 zone on Maui, what lands would be -- what lands would

be affected on Maui for this? Where would you look for this new M-3 zone on Maui? You must have thoughts of it already.

Mr. Hunt: Generally speaking, given the description of the M-3 zone that I gave, we would look for somewhat isolated land that's not near residential areas perhaps with existing industrial uses already, so we would establish criteria and then use that to determine which areas. I mean off the top of my head, perhaps out by the existing sugar mill, perhaps near the airport ...(inaudible)...

Ms. Buchanan: Cause the whole reason for this designation or zoning was to give businesses a break on property taxes. Is that correct? It's a different scale of what they're paying in the light industrial. Is that correct?

Mr. Hunt: I'm not sure. Can you say the question again?

Ms. Buchanan: The taxes that you pay on an M-1 zoning and the reason why people who wanna do light industrial go to these places is because they need a larger parcel to operate their business in, like warehouses and stuff like that, and so they pay a lesser tax, property tax?

Mr. Hunt: I'm not sure what the taxes. From what I understand with the taxes, they kinda look at the use of the land and if you have businesses, there's the possibility that you're taxed as business. The argument that I've heard more -- more clearly, actually the only argument that I've heard is the land in an industrial area is cheaper to buy or lease because it's industrial and it's not as attractive ...(inaudible)... so then the businesses go there because of the rent or the purchase price of the land is cheaper.

Ms. Buchanan: So now in Maui, when you come from the airport and you driving through the back there, Dairy Road and all of that, you can see how that developed over the years from being an industrial area now to an area that has businesses, and so I don't know what happened and what or, you know, didn't happen for Maui to have that problem now but, basically, nothing's really wrong with the way the language is in the law that pertains to the description of what you can or cannot do, and so we don't have that problem here and that's why I'm not so inclined to just file this because, for Commissioner Sprinzel, it's we either make recommendations and deny something, or you accept this the way it is, and anything short of that would be confusing for the -- so right now, I'm not -- I'm not so inclined to file this because when they made the laws, they knew what they wanted. They had a clear picture in their mind of what light industrial was, and that was not Starbucks, and yet somehow Starbucks was able to go there, and so that's why we have a problem now ...(inaudible)... M-3 zone for people to now expand out to where the sugar mill is and then try not to make the same mistake. So I don't know. I would like to see -- do we have time to defer this to the next Commission meeting again? Cause I no see us having

consensus today, like we never have last meeting. I like Commissioner Vanderbilt's recommendation.

Mr. Yoshida: Yes, Commissioner Buchanan, if you look at the first paragraph of the Department's report of May 18, 2009, the second sentence says, "The deadline for the Planning Commissions to transmit comments back to the Council is July 8, 2009." And I guess on your agenda, it is noted that on the June 24 meeting, we have the zoning change for the Veterans Center as well as the amendments to the flood hazard district bill, which Francis Cerizo had talked about when he was here in May, so those are the two public hearing items on the June 24 agenda. Also on the July 8 agenda, we have the Department's bill regarding amendments to the residential district section of the code. Those are the upcoming public hearings for the Planning Commission's ...(inaudible)...

Ms. Buchanan: Okay, so you're saying "no," we gotta make one decision today then?

Mr. Yoshida: If they feel they could fit it in within the time frame with all the other items that are already scheduled.

Mr. Kalipi: Commissioner Sprinzel.

Mr. Sprinzel: ...(inaudible)...

Mr. Hunt: And I don't think it was ...(inaudible)... necessarily. Potentially, you could have your potential problems during the community plan update ...(inaudible)...

Mr. Hopper: You could also simply say if you want -- if you want to eliminate B-1, B-2, B-3 uses, you could add clubs and fraternal organizations, either clubs or fraternal organizations as a permitted use, just list it right here in the -- in the use regulation of industrial if you wanted to keep that as a use. So, basically, you're advocating for eliminating all B-1, B-2, B-3 uses except ...(inaudible)... you could recommend that here you would like to see it all in industrial, for example, the item -- the Veterans Center ...(inaudible)... private clubs and fraternal organizations. Or you could say public/quasi-public facilities, which is the description that the Council just put into the interim bill that would allow the Veterans Center ...(inaudible)... so there's ways to customize your recommendation. If there are uses and you want them to be included on the long list of them that you think should still be in there ...(inaudible)... so I think you can have a flexible enough recommendation to keep that, keep the Veterans Center if goes through the change in zoning to the light industrial to conform with the community plan, to keep that ...(inaudible)...

Mr. Hunt: So under that scenario, you would recommend support of the bill for Molokai with the addition that public/quasi-public uses be added ...(inaudible)..

Mr. Sprinzel: ...(inaudible)...

Mr. Hunt: You wouldn't need to include that in the motion. That's just the way the law operates.

Mr. Kalipi: Okay, anymore questions? Commissioner Chaikin.

Mr. Chaikin: I was looking at just to throw out my two cents into this thing. You know, on an island as small as this, and as difficult as it is to start any business of any kind, you know, I have a hard time saying to somebody that they can't build a laundromat, you know, across from Chevron because that's light industrial and you have to only do these ten items here that's listed. It is very difficult to do anything. Where I have the problem -- so, you know, I don't have a problem with flexibility in terms of just as long as it's a business. Where I have the problem is where you move into residential and, all of a sudden, you say: In light industrial, you can build a condo complex. I mean I think that's deviating substantially from the intent of the light industrial district. You know, for me, that's, you know, where I'd like to see -- to draw the line in terms of, you know, if we were going to draw the line somewhere. I think it's kind of extreme cause when you look at the ordinance right now, it includes business within the light industrial, and there's lots and lots and lots of different business uses. So what we're saying is we're going to cut out all of those businesses in the light industrial uses and only allow these very few, and I think that's problematic in a place like Molokai where there's so few options for people to start up a business and places to go. You know, when you look at some of the places that are light industrial, like across the street from Chevron, to, you know, tell these people that, you know, they can only do these certain kinds of businesses there, I think it's going to be tough.

Mr. Kalipi: Thank you, Commissioner Chaikin. Anymore questions for Director Hunt? Okay, seeing none. We're going to excuse Director Hunt and we're going to take public testimony and we might call you back in a little bit. Thank you. Corp. Counsel.

Mr. Hopper: Jeff, I just wanted to confirm. How are residential uses allowed in industrial? I'm reading light industrial and it says, "Residential uses are excluded from this district." It says that in M-1 light industrial. I'm not as familiar with it as you. But how do we get -- I guess in the business districts it says I think a single-family homes are a permitted use in one of the business districts but was that statement in the M-1 light industrial? It just says, "Residential uses are excluded from this district." And I'm asking because it's the will of the Commission to cut out residential as part of the uses and I just need to know how you could do that.

Mr. Hunt: I think you raise a good point. The business districts, as I understand it, provides for dwellings, so perhaps clause there would prevent that so --

Mr. Hopper: And then in M-2 it says, "Any use permitted in B-1, B-2, B-3 business districts, and M-1 provided, however, that no building structure or a portion thereof shall be hereinafter erected, converted, or moved on any lot in the M-2 district for dwelling purposes, including hotels and motels except living quarters used by watchmen or custodians of industrial use property." I just wanted to make sure that within the Commission's recommendations they wanna make doubly sure that all residential uses are excluded and list the uses that should be excluded, you could do that ...(inaudible)...

Mr. Hunt: I think you're right, Mike. I was going off memory and my memory ...(inaudible)... allowed in the business district but you pointed out that clause seems to exclude them in the industrial districts so maybe that addresses Commissioner Chaikin's concerns.

Mr. Chaikin: Let me just add: isn't apartment -- apartments a listed use within the light industrial? It looks like, I'm reading this, number 32 on the list, it says apartment ...(inaudible)...

Mr. Hunt: Apartments are specifically listed so I don't think it would address the apartment issue but I believe it would address the single-family dwelling issue.

Mr. Chaikin: But that's also specifically listed under business, it says you specifically can do it as long as you meet these certain conditions. You know, I read that too and I ran into this conflicting language within the thing. Some things said you can and some things said you can't. So then it's a matter of interpretation whoever is doing the interpreting.

Mr. Hopper: I think for single-family dwelling, it looks like they say, right after B-1, B-2, and B-3, which are allowed, it says you can't erect anything for dwelling purposes, so if you see -- if you see the apartment houses listed as a permitted use, that's there as far as the apartment uses. But the single-family dwelling purposes I think is questionable in this case that it would be allowed. Obviously, we need to be doubly sure that ...(inaudible)... absolutely say, you know ...(inaudible)... say B-1, B-2, B-3 uses such as ...(inaudible)...

Mr. Hunt: And the more I think about it, I don't recall single-family dwellings to be an issue in the industrial zone. Apartments - that issue has been because of that clause that provides ...(inaudible)...

Mr. Kalipi: Director Hunt, did you say, when you first came up, that the Department, the Planning Department, wanted to take the language and do a little more research to alter what we're looking to be -- what's proposed from the Council and then reestablishing another proposed language for what we see on this. Is that correct?

Mr. Hunt: Close. Our recommendation is to file this bill and, at the same time, the Department would commit to coming back with a new industrial zone which would be true

industrial without businesses allowed unless they're directly associated with the industrial uses that's on the lot. So that's what we -- that's we recommended to the other Planning Commissions and we recommended at the last meeting here but based on some testimony from the Molokai Planning Commission, I'm not sure that that's not the direction to go. We are here to help you craft your recommendations. It's not like if you don't follow our recommendation ...(inaudible)...

Mr. Chaikin: I was just wondering, like if the bill stays as is, apartments are allowed. Are apartments and condominiums - is that considered the same thing?

Mr. Hunt: Yes. We have a few apartments in the business district but it's not a lot so it's not a huge issue.

Mr. Hopper: I'd like to note that what's allowed is an apartment-house, that definition says the same thing as a dwelling unit in multi-family and that defined as follows: A multi-family dwelling unit means a building or portion thereof which consist of three or more dwelling units which is designed for occupancy by three or more families living independently of each other. So that would appear to be allowed in the M-1 light industrial even though we do have language saying that dwelling purposes are allowed, a more specific statement. Again, you got some flexibility here in that if you don't want those apartment-houses in there, then you gotta recommend that you don't want apartment-houses ...(inaudible)...

Ms. Buchanan: Director Hunt, can you give me an example of what they refer to as an accessory use or structure necessary to facilitate the establishment of the principle permitted use?

Mr. Hunt: Accessory uses are fairly broad. For example, a hotel might have a little tiny store ...(inaudible)... and an accessory use to a dwelling would be a garage or a storage shed. An accessory use in the industrial could be considered ...(inaudible)... An office. I think an office to an industrial use could be considered accessory to that industrial use ...(inaudible)...

Ms. Buchanan: That wording is underlined in the ordinance; is that because they wanna put that in or because they wanna take that out?

Mr. Hunt: If it's underlined, it's added.

Ms. Buchanan: It's added.

Mr. Hunt: Proposed to be added.

Mr. Hopper: And right above that is actually apartment-houses, it's bracketed, so it actually means in the original recommendation, it would get rid of apartment-houses. So if you recommend passage of this bill, and it passes, apartment-houses are no longer permitted in industrial, so that part of the intended bill was to actually get rid of residential uses ...(inaudible)...

Mr. Kalipi: Okay, thank you, Mr. Hunt. At this time, we're going to open the floor for public testimony on this item. Please come to the podium and state your name.

Ms. Diane Swenson: Diane Swenson. You know, I -- I have no problem with the eliminating the apartments. I don't think they belong there. I do -- I would urge you to file to follow the Department's recommendation because I don't think this has been given enough thought or analysis. I mean I think that to just put a strangle hold on all of these properties without really giving it thought and consideration isn't -- isn't right. And, you know, right now our world's changing really fast and businesses are changing and the mode of what's going to work in this country's changing, and I think to say that we're not going to -- I mean, for instance, some really low impact nothing business could come to this island and do something that would give jobs and not hurt the environment or do anything except provide jobs and to say, hey, we're not going to allow this or even consider it, I think this whole thing needs more consideration. So I would not want you to pass something that would just strangle the island and these properties without more thought and consideration and understanding what you're doing. I don't mean that you don't understand what you're doing but I mean to have a better understanding of the impact of what your actions are. So I would recommend that you go with the Department, and let them work on it, and come back with something that is more understandable. Thank you.

Mr. Kalipi: Thank you. Any questions, Commissioners, for Mrs. Swenson? Thank you. Any more testifiers?

Mr. DeGray Vanderbilt: Thank you, Mr. Chair and Members of the Commission. My name is DeGray Vanderbilt. And I guess where I'm coming from, and I think the Council is coming from, is -- is to try to keep it simple. Right now, you have -- when you talk about the highest and best use, is it from a planning standpoint or is it the highest and best use from a marketing standpoint for the landowners? Now I'm coming from the planning perspective and not so much as putting a strangle hold, which I don't quite understand what that would be on the existing landowners cause they still got a lot of uses, but I look at it is doing what we've set out, what the GPAC talked about, is protecting the vitality of our small towns rather than setting up new little shopping malls outside of town when we have such a small economic base. I tried to keep it simple. If you look at the -- the proposed changes -- and I wanna thank Mr. Hunt. I did have a chance to sit down and meet with him and he was okay with some of the changes but he said it's up to the Molokai Planning



Commission, which it is. If you look at the one page where I put the uses, one of things that I put in there was from another ordinance and it was --

Ms. Buchanan: DeGray, wait. I'm not sure what document you're referring to.

Mr. Vanderbilt: It says the light industrial is one page and it says "Proposed amendments in bold italic type."

Ms. Buchanan: Okay, the one that has Chapter 19.24, Hotel Districts.

Mr. Vanderbilt: Yeah. And that's -- these are just from the bill. This is only the changes. But at the end, I added wording that was taken from another ordinance on timesharing plans, and it says, "Business uses which were operating pursuant to and under the law as of the effective date of this ordinance as codified in this section shall not be impaired by provisions of this section as long as the business continues to operate as it has been operating prior to the amendment -- amended ordinance being codified." Director Hunt didn't have any problem with that but he said it could be better worded and that he could come up with some wording if that would be the will of the Commission. You know, Director Hunt said the problem is that a lot of businesses are going for the cheaper land in the light industrial; well that's exactly what people are going to do here. Business people will go for the cheapest deal. And so what do you wanna do? Do you wanna make it totally flexible for everybody to come in to do whatever they want, wherever they want, with no -- with no -- with no thought given to really how it's going to impact our existing businesses. We just don't have a big economic base here. So what I did was I looked back at the Molokai Community Plan, and if you look at that -- that one page or that page where I listed all the things, the latest law passed says that the General Plan of the -- this is the -- the current General Plan says the General Plan -- oh no, this is in the County Code, "The General Plan of the County of Maui, with an effective date of September 7, 1991, which is on file at the Office of the County Clerk, is adopted as the General Plan of the County and by reference made part of this chapter." And then it goes on to say, "And the Molokai Community Plan is part of the General Plan. All agencies of the County," and you guys are an agency of the County, comply with the -- "shall comply with the provisions of the General Plan, notwithstanding any other provision, all community plans, zoning ordinances, subdivision ordinances, administrative actions by County agencies," such as yourself, and your decision today is an administrative action, "shall conform to the provisions of the General Plan, which includes the Molokai Community Plan." Now, I went back to the '84 and the 2001 plan, and they said, "All zoning applications and/or proposed land uses and development shall be consistent with the Molokai Community Plan policies." It said the same thing in the 2001 community plan. Then in the 1984 community plan, it says, "Review, amend and adopt, as appropriate, zoning ordinances," what you're looking at today, "to carry out the land use categories indicated in the Molokai Community Plan." And it said the same thing in our most recent plan. The Maui County General Plan, the last

statement under implementation says, "All County laws and ordinances shall be consistent with the intent of the General Plan, which includes the Molokai Community Plan." Now what was the intent? What was the intent of our Molokai Community Plan? And I have to say, you know, this community plan, I'm going to read you some of the names of the people that were on this community -- put these community plans together: Wren Wescoatt, John Ka`alekahi, Dr. Emmett Aluli, Ronny Kimball, Julia Egusa, Pearl Hodgins, John Urauchi, Beverly Pauole-Moore, Poncho Alcon, Reynolds Ayau, Aka Hodgins, Greg Helm, Brie Yamashita, George Tamura. So these guys knew what they were doing and so when they put LI, for light industrial, to go to Page 2 of that, in 1984, light industrial, they put light industrial on the map, and then they defined what that meant. It meant this is for warehousing, light assembly service, and craft type industrial operations. That's in the community plan. That's the description of LI. And then you get all these other zoning ordinances that aren't consistent with that. In the 2001 community plan, it had the same definition. There was no change in the community's intended uses within the light industrial district. So now we have a chance, a zoning ordinance coming through because of problems the Council feels are happening on Maui; they haven't happened here. I went up and talked to all the owners in the industrial park. I talked to Ed Misaki. He doesn't feel his business would be affected and even if it was, there's that pe-existing condition. I talked with Porter and with -- what's Pale's first name? Peter. Yeah, Peter Pale, up at the Na Pu`uwai Center. And Time Warner Cable, and the Federal Government is in one of those storage situations, and then the salt business is up there. And then you have the State, and then you have Molokai Electric. So none of those businesses would be affected. We do have light industrial in Maunaloa and it's zoned M-1, which is -- M-1 is the same as light industrial, and that's that piece up there where the Ranch had its baseyard. And then we have light industrial in Kualapu`u and Pala`au was intended -- was intended to serve Kaunakakai in our last community go around. As a matter of fact, if you look at -- on these maps, if you look at Exhibit -- if you look at Exhibit B1, you'll see the 2001 community plan map, B1. Above is the 1984 community plan map, which showed heavy industrial for all that area. Then in 2001, we not -- not only did part of the heavy industrial go to light industrial, but another 20 acres was added north of the existing light industrial, along the highway, so that the light industrial could be moved out of Kaunakakai because the community plan calls for that to be linked to the sea in a really setting for visitors and the residents alike, park like, we'll have the Veterans, we'll have the canoe clubs, we'll have the park, and it's -- and it's -- it really sounds like a fantastic thing if it happens. So if you allow all these businesses along the roads out here, it's just going to take people away from Kaunakakai, Kualapu`u, and Maunaloa, and the community was very conscious of putting mixed uses so they would be sustainable communities. And if you just allow the market place to run it, and all the people coming in here with investors that are trying to make a quick buck, they're going to take the easiest way out and all the planning that we've done over the last 20 years, it's just going to go down the drain. And I really think that -- we're coming up to our community plan. We have a unique situation too. We have a major landowner that doesn't care a damn about Molokai, and they're going to sell it to anybody

that they want. And there is another use in light industrial now. There's a bill that's going through and -- on the interim zoning standards, it went up, and the Council included interim uses to include bed and breakfasts, and they did that because they said that's what Molokai wanted, and that was -- that came from the cover memorandum that went to the Council from -- from Director Hunt sending up the recommendations from -- from Molokai. Now I listened -- I read those minutes and I didn't see where Molokai was chomping at the bit to have bed and breakfast in interim cause interim is all of Maunaloa, the light industrial area, all of the East End, all of Kaunakakai, and now that's open for bed and breakfast uses, even the abandoned golf course at Kaluakoi is in interim, so that could be sold to somebody who wants to put up a single-family house and put a bed and breakfast in there too. So the community has done so much work and as you can see from '84 to 2000 -- till today --

Mr. Kalipi: DeGray?

Mr. Vanderbilt: Okay.

Mr. Kalipi: Thank you for all the information that you were sharing.

Mr. Vanderbilt: Okay.

Mr. Kalipi: Can I ask you are you in support of the proposed that is before us or you were saying that we shouldn't -- or what are you saying besides all the information ...(inaudible)...

Mr. Vanderbilt: Joe, I put a one-page thing together and it has the changes suggested that would make it consistent with our community plan. It says, "Any uses permitted in the B-1, B-2, or B-3 district, except on Molokai." That's one change.

Mr. Kalipi: Yeah, I don't think we're going to get time to get through it all and I think if we really wanted to read it and digest it, it's not going to happen in about five to ten minutes.

Mr. Vanderbilt: Well, I gave it out at the last meeting also and I don't know - you weren't here - I don't know if the Planning Department forwarded it on to you but, you know, I'm just trying my best to -- I got nothing in this. I have a piece of property I just bought out on the East End that's interim. I'd love to put a bed and breakfast there. It's right across from Wavecrest. I could be the bed and breakfast king on Molokai. But this community has just worked so hard over the years, and we have a great community, and just because the world's changing, doesn't mean that Molokai has to change. And by not changing, we're going to be the best game in town come a few years from now when everything else looks so homogenized. So anyway that's just my thought and I would hope that you would send it to the Council and not file it because just send it to the Council with recommendations that work for Molokai. And I even added in there, under 28, after vocational and trade

schools, and on Molokai, Veteran service facilities. And so anyway I just think this is a chance finally for a bill to come around, an ordinance that you can make consistent with our community plan because all these ordinances that are done over in Maui, they just aren't and here's the chance to correct one. And then when we come back with our community plan review, if people want to say, no, we think light industrial should include Starbucks and everything else, well then maybe it'll change, but that wasn't the intent in 1984, and it wasn't the intent in 2001. So thanks, Mr. Chairman.

Mr. Kalipi: Thank you. Any questions for DeGray? Commissioner Chaikin.

Mr. Chaikin: Thank you, DeGray. I mean, obviously, you spent a lot of time and -- and put a lot of thought into this and thank you for -- for doing that. Let me just, you know, throw out the flip side to what you're saying. I mean here we are in 2009 and we just had one testifier who came up and said the world is changing, and we don't really know what's happening in the next 20 years with the whole gas situation. Right now, we can jump in our car and we can drive from Maunaloa and come into town. But it's quite feasible that, you know, the price of gasoline could just skyrocket to the point where it's really not practical for people to jump in their car and drive from Maunaloa and come into town to buy something that it might be easier for them to just work and get everything they need, like say in Maunaloa, so if we don't allow -- if we restrict the L1, which is a pretty good chunk piece in Maunaloa, and not allow them to do all these different kinds of businesses and only allow them to do the LI business in that section, I just throw that out, isn't that going to make it more difficult, you know, when we look at the big picture?

Mr. Vanderbilt: Yeah, thank you, Commissioner Chaikin. I -- if you look at exhibit -- well it's probably -- it's not very clear, but if you look at Exhibit B or B1, the light industrial is not a real big area, it's across from the hotel and across from the movie theater, it's M-1, but there's -- there's businesses -- there's businesses going all up the street as you enter Maunaloa on both sides, and they have a place for a gas station, and there's businesses up from the post office all the way up to the top of the hill on both sides of the road for business uses. There's business at the corner where they have all -- they were going to do that plantation museum. So there's very -- the only businesses up there really now - you have a market that's not functioning - and so if somebody -- why would somebody open a market up there when they can open a market at say Holomua Junction, a supermarket at Holomua Junction and take off people from Maunaloa, Kualapu'u, and Kaunakakai? Why would anybody go to Maunaloa and open a store if they can just get cheaper lands somewhere else that's closer to more people? But as Maunaloa grows, there's room -- there was a grocery store, there's a post office, a fire engine, and there's room up there in business. But now you're saying to these country town business, we've changed the zoning to country town business in all these little towns, but you're going to be up against people that now can go get cheaper land and they don't even have to meet the design guidelines that you have to meet for country town business to keep the integrity

of the design of the town. It's just a free for all. It's just a box store type mentality. And so that's -- I mean we tried to do so much -- we worked to keep these towns from not going the way of some of the towns in -- in Maui that have just gotten sucked dry because people had moved out for the cheaper land and sort of suburban type shopping centers.

Mr. Kalipi: Okay, the Maunaloa Store is open. The General Store ...(inaudible)...

Mr. Vanderbilt: But it's business zone and you can have a gas station back in there. I don't think you can have a gas station in light industrial. So, anyway, that's what I thought and I just -- the Veterans are not going to be affected by this if it goes through and allow some Veteran service facilities. Nobody on Maui would have any problem with that anyway.

Mr. Kalipi: Okay, anymore questions for DeGray?

Ms. Buchanan: No, not for DeGray. I have for Corp. Counsel.

Mr. Kalipi: Okay, thank you.

Mr. Vanderbilt: Thank you very much.

Mr. Kalipi: We're going to take anybody else first and then maybe at the end, you can come back for about a minute or so. Anymore public testimony from anybody else? Okay, seeing none. Go ahead. This is going to be our last testifier.

Ms. Swenson: Okay, quickly again. Diane Swenson. You know, DeGray's spinning this tail but I wanna tell you guys about demographics. How many people are on this island? McDonalds won't even look at a community with less than 25,000 people. There is not an investor trying to buy anything on this island. There isn't anybody trying to do any business. There is nothing. God help us. Would it be wonderful if someone wanted to come here and do something. He says he went and talked to all of the businesses in the industrial park. He did not talk to one landowner. Everybody he talked to was a tenant. I don't believe DeGray talked a landowner. He talked to Nature Conservancy and -- and Ed does work for Nature Conservancy but DeGray didn't talk to any landowner. He certainly didn't come and talk to me. And the people he talked to in the industrial park are all tenants. So I -- he's painting a picture of what doesn't exist. I'm sorry but I don't, and all due respect, I don't agree with you, DeGray.

Mr. Kalipi: Okay, thank you. Because I did let Mrs. Swenson comment, I'm going to let DeGray just comment, and please keep it brief and we're going to close --

Mr. Vanderbilt: The only reason I went up and didn't -- I wasn't out to talk to the landowners. At the last meeting, there was a concern there might be some impact on the

tenants so I went up to see what tenants were in there, what their businesses were. That's the only reason. I had no interest of talking to the landowners or no agenda to talk to the landowners, and I'm not putting a spin on anything. All the stuff that I've given you has come out of documents, County documents, our community plan documents. It's not my spin. It's the community's spin. So thank you.

Mr. Kalipi: Okay, thank you. At this time, I'm going to close the public testimony and you're gonna -- Mr. Hunt, I guess some of the Commissioners have some questions for the Planning Department.

Ms. Buchanan: I have a question for Corp. Counsel.

Mr. Kalipi: Oh, I'm sorry.

Ms. Buchanan: I wanted some advice. On DeGray's light industrial use regulations, I see him trying to find an out for the Molokai Veterans facility should we adopt this draft bill. You mentioned the public/quasi-public as maybe also another probable addition as an amendment to this draft bill. Could you help me out in trying to see how that would pertain to having no impact for the proposed Veterans project should this draft bill be adopted?

Mr. Hopper: ...(inaudible)... situation, I think the Veterans Center is not currently zoned light industrial but community plan light industrial. It's zoned interim. And recently Council passed -- recommended passage of an interim bill that would include public facility or quasi-public facility as a permitted use, and quasi-public facility says -- it means a use conducted by or facility or structure owned or operated by a nonprofit, religious, or eleemosynary institution, which provides educational, cultural, recreational, religious, or other similar types of public services. I think the Planning Department went on record in the interim bill discussion that having public facility and quasi-public facility as a permitted use would allow Veterans Centers in the interim district with respect to that bill. Also, in light industrial, light industrial includes B-1, B-2, B-3 uses. In B-2, there is a use there that says, "Private clubs or fraternal organizations;" that's where the Veterans Center would also go, so it could go under either one of them. But if you cut out B-1, B-2, B-3, B-2 would be cut out and then the Veterans Center, if it changes its zoning to conform with the community plan, it would be light industrial, it would seem to not be a permitted use anymore. So you could either -- you could probably do what DeGray recommended but you could also do -- you could just simply take that B-2 use of private clubs or fraternal organizations, list it as a permitted use in light industrial, or you could add public facility or quasi-public facility as a permitted use in the light industrial -- light industrial zone, and if it's explained that way, I think the Council wouldn't have a problem supporting that although I can't speak for them, but that would be the way to do it. You've got a variety of options.

Ms. Buchanan: Okay, so the definition for public/quasi-public facility under the B-2 is found where? Is it really long? Can you say that again?

Mr. Hopper: Well, B-2 doesn't have public/quasi-public.

Ms. Buchanan: Oh, I sorry.

Mr. Hopper: It has private clubs --

Ms. Buchanan: Private clubs.

Mr. Hopper: Or fraternal organizations.

Ms. Buchanan: Okay.

Mr. Hopper: That's it. That would be cut out if this Council bill is passed. It's a concern if they get their zoning to be M-1 light industrial. So you can prevent that from being cut out by leaving it in or saying you don't want that cut out.

Ms. Buchanan: And so if I propose an amendment to include the public/quasi-public facility, where would the County Council find that definition?

Mr. Hopper: Public/quasi-public facility -- well public facility and quasi-public facility are separately defined terms. The one you wanna look at is quasi-public facility or quasi-public use. That's in the definition section of Title 19 that applies to all the zoning districts. You could just add it to light industrial or just add it as a use. And the Council added that on the recommendation of the Planning Department in order to deal with the Veterans Center situation and if that goes up on second reading, first and second reading, then that would be a permitted use. So if you put those definitions, public facility or quasi-public facility, or just quasi-public facility and put that -- recommend that the Council add that in as a permitted use, and I don't see that as being any problem; then that use is then permitted everywhere you have M-1 light industrial land and once the Veterans Center, if it does, get its change in zoning to M-1 light industrial, it would still be a permitted use.

Ms. Buchanan: I thought I heard you say that that quasi-public use would be a 501(c) nonprofit. Where was that definition? That's what I was getting at.

Mr. Hopper: It means a use conducted by or a facility or structure owned or operated by a nonprofit, religious, or eleemosynary institution, which provides educational, cultural, recreational, religious or other similar types of public services. And so I think you can look at nonprofit organization. I don't know. It doesn't say 501(c)(3). It just says a nonprofit organization.

Ms. Buchanan: So under the religious aspect of that definition, that excludes a church?

Mr. Hopper: No, a religious institution I think --

Ms. Buchanan: That is a church?

Mr. Hopper: I think you can probably do a church. Again, I can give you my legal advice. The actual person making a determination, who I also give legal advice to, would be the Planning Department. And when it went through the interim bill, it said that this would allow for Veterans Centers, and the Council wanted to do that, so the way -- and the Department wanted to do that, and the way to do that is they recommended that -- you could simply say Veteran Centers on, you know, Molokai if you wanna be real specific. Anyway you want to. This is how it would go on ...(inaudible)...

Ms. Buchanan: No, I actually like the aspect of having a quasi-public facility be an allowable use in the light industrial. The bottom line of that is that nobody's sleeping there. I'm not renting it out as an apartment. It's going to possibly be for intermittent use. And it's not a really permanent thing where you're going to have people sleeping there. So I -- and that could be all inclusive. So I kinda like that. Okay, thank you. I just wanted to get that straight in my mind.

Mr. Kalipi: Okay, Commissioner Chaikin.

Mr. Chaikin: Thank you. Just, you know, I'm -- I guess one of the reasons that I'm struggling with this is cause we have the community plan zoning designations and then we have the County has their zoning regulations, and they're not the same. I mean they're not always the same. I'm looking at across from the Chevron is, on this thing, it's labeled heavy industrial. And on our community plan, it's business. So as I'm contemplating this bill, I'm trying to think: Am I thinking about the community plan or am I thinking about the County zoning? And after this community plan was passed, the County Planning Department never changed the zoning to reflect the community plan. And I thought I heard you earlier say that this next time around, you thought it would be different. If you are still the Planning Director, that you would actually change the County zoning to match the community plan. Is that what you said?

Mr. Hunt: I said that the Planning Department would propose the Council adopts that. That's what we would propose.

Mr. Chaikin: Did -- after the last community plan, I mean did they change any of the zoning? Or I mean they didn't change ours. Did they go change any other areas and just not do ours or they didn't change anything?



Mr. Hunt: Traditionally, the zoning's been changed through a separate ordinance, not across the board. So this County hasn't had the tradition to when you adopt the community plan designation to also simultaneously adopt the zoning but, again, that's what we would propose ...(inaudible)... when you adopt the community, the zoning should happen to actually be consistent and we get away from all this inconsistency across the board ...(inaudible)...

Mr. Chaikin: Across from Chevron, it's in the community plan it says business, so if somebody wanted to open up a hula studio over there, it would be prohibited because that's not, you know, if we pass this bill, it's not heavy industrial. They wouldn't be able to have their hula studio across from the Chevron. I'm just wondering how that works. If somebody wanted to do that, do they need to have a community plan amendment because our zoning is not consistent with what they wanted to do? I mean that's kind of a divergent question but --

Mr. Hunt: We would have to take a look at the community plan designation. The community plan designation is business you're saying?

Mr. Chaikin: Yes. That's what I read. It's business across the street from the Chevron. But according to the County, you guys have it as heavy industrial.

Mr. Hunt: Zoning? The zoning would rule. The zoning doesn't allow ...(inaudible)...

Mr. Chaikin: Okay, the County zoning would rule is what you're saying? So if somebody wanted to do something that was allowed in the -- say we pass this bill and then the people wanted to put a hula studio in -- I guess I'm trying to figure out if the -- somebody wants to do something and it's consistent with County zoning but it's inconsistent with the community plan zoning, do they have to have a community plan amendment?

Mr. Hunt: Not necessarily. The community plan is broader and when I read your community plan, your heavy industrial uses don't speak to business uses but your light industrial community plan designation contains services, which, in my mind, ...(inaudible)...commercial business retail, so we would take a look at that. But the zoning is the first step. You have to have the consistency...(inaudible)...

Mr. Chaikin: Alright. Thank you.

Mr. Hopper: You have to ...(inaudible)... SMA or a subdivision, you do have to have community plan consistency.

Mr. Hunt: So then it gets down to interpretation because is it consistent with light industrial or ...(inaudible)...

Ms. Buchanan: Unless you get a conditional use permit?

Mr. Hopper: You cannot get a conditional use permit to get around the community plan issue. That's State law for SMA and for subdivisions. You can get a variance for a subdivision, but I don't think you can get a conditional use permit to get around the community plan.

Mr. Yoshida: If I can comment on Commissioner Chaikin's question. The Department did, I guess when Linda Lingle was Mayor, probably in 1997, did go in and zone the commercial properties from interim to BC-T country town business with an existing use, you know, the Imamura, the Kanemitsu Bakery, Kualapu'u Market, Kualapu'u Cook House. You know, the individual landowners did not have to come in and rezone their property. The Planning Department came in because they felt, you know, those were the people that were stuck because they were grandfathered. But if there was a prior, and the use was discontinued for a year, they would lose their ability to continue. We had that with Hop Inn, and when Hop Inn closed and they tried to reestablish the restaurant, which had been a year, if they built a new store, they would lose their -- so the Department did come in and zone properties on Ala Malama Street to business.

Ms. Buchanan: And that's true. And might I add that's why Akaula School paid a thousand dollar fine because they were unaware of -- don't they call that "comprehensive zoning" when you -- when the County comes in and comprehensively zone a lot of parcels all at once? And so that's good if that's what you want. But then that's not good if it's not what you want.

Mr. Kalipi: Okay. Anymore questions for Director Hunt? Or if not, we're going to -- I'm going to entertain a motion from the floor of where the Commissioners wanna move on this.

Ms. Buchanan: I'll take a shot at it. I guess worse case scenario being that we only have five members here today, yeah, if it doesn't fly, then I guess we going have to ...(inaudible)... I actually would like to move, and I hope it gets seconded for discussion, and to adopt the draft bill to amend Section 19.24 and 19.26 with the following recommendations: That we include the exemption of preexisting uses that was proposed by ex-Commissioner Vanderbilt, and maybe it doesn't have to be worded as to what is ...(inaudible)..., and that would mean that the current businesses in the light industrial now would not be affected; also, a recommendation for amendment to add quasi-public facility or quasi-public use as defined in Title 19.

Mr. Kalipi: Okay, there's a motion on the floor. Any second to that motion?

Ms. Buchanan: Seconding the motion only opens it up for discussion.

Mr. Kalipi: You can't second. Excuse me? Okay, Commissioner Bacon second the motion. Okay, open for discussion.

Ms. Buchanan: Since this was my motion and we're in discussion, it's very clear that the Planning Department does not want this to pass because it'll create a nasty situation in Maui. With the amendments and recommendations that I made in the motion, it will not have any impact on existing businesses, like the Swensons, like Molokai Ranch, or Coffees of Hawaii. Nobody will be affected by my motion on Molokai. However, on Maui, it's going to be not fun for the Planning Department and that's probably why I think that they're asking the County Council to file this because they feel the County Council hasn't clearly thought through. On this paper, you have a number of businesses listed that will be affected on Maui should this go into effect. I kinda like calling black black and white white. And I have problems when black and white turn into gray. And I think that's when you have -- start to have a compounding of problems in which you need enforcement, and we know we all don't have enforcement, and then we end up with this problem now. There is no problem with the definition of light industrial as proposed in this amendment because it even removes the B-1, B-2, B-3 and then you don't have the concern of apartment structures and living -- and people dwelling in the light industrial district. And I think, for Molokai, that's good. And, Commissioner Chaikin, you asked about the hula studio across from Rawlins. You know that M-3 designation goes way back because don't forget that we had our electric company in town, and then they moved that out, which was a good thing, but the damage left behind by that heavy industrial use now makes half of Kaunakakai Town a brown field and that's where we're living in a brown field now; that's why you have heavy industrial designations. You want your uses where you say you going have your uses. And so we shouldn't -- the town of Kaunakakai shouldn't be residing in the same business of a oil refinery or a petroleum storage tank - should it blow up, it will wipe out everything including Molokai General Hospital because I've seen the blast pattern plan and that's why you don't have those uses in an industrial area because you can wipe out your entire town in a blink of an eye, and we shouldn't be near an industrial use like that. That's the reason why you have this kinds of zoning. So that's why I'm in favor of this cause I think the County Council also saw that the compounding of the problems in Maui was getting out of hand, and they needed to stop it, and this is their attempt to stop it. And, at the last meeting, Commissioner Sprinzel said, well, this is fine if you were talking about a green field, and I said, well, we are the green field. So you doing ground basic line planning when you saying M-1's going to be M-1; M-2's going to be M-2; M-3's going to be M-3, and we're not going to start stacking uses within that district. It's an attempt for that. So adding the quasi-public facility, I have -- don't have a problem with that because a lot of instances where it's not a dwelling would fit into there, 501(c)'s nonprofit, you know, anything -- and then you also have watchmen can be there full-time, and what is that other one? But that's an allowed use. And so that is the basis of my recommendation for my motion today.

Mr. Kalipi: I'll allow Corp. Counsel to make a comment.

Mr. Hopper: Just to clarify. As far as the nonconforming uses, sometimes you get into issues with this. There's an existing provision about nonconforming uses that says that you can't do repairs to more than 50 percent of your nonconforming use, you cannot expand your nonconforming use and ...(inaudible)... if you burn down where you have to repair or replace 50 percent, you can't do that, okay, and if you stop the use for a year. The provision DeGray cited is a little -- a little broader than that but it also says, "As long as the business continues to operate as it was operating prior to the amended ordinance being codified." Typically, that would be placed in the section of the bill dealing with the effective date. Basically, it would say this would not affect any business operating under the law prior to this effective date. I wanna get a feel from the Commission of what you want to do here. Does this mean that a business operating now is allowed to expand their business if they're nonconforming? I think this says they cannot change to another use, and if they are destroyed or they can be rebuilt to the exact same use which could be renovations that are valued at more than their value of their whole building and can they expand their uses ...(inaudible)... all things that I can write or come up with something but I don't want to do that on my own and then be asked why I did it a certain way or something, so guidance on that would be appreciated I'm sure by the Department on how to draft that section.

Mr. Kalipi: Commissioner?

Ms. Buchanan: I, personally, don't have any problem with the uses now for Molokai. I don't know what the problem is exactly on Maui and I cannot respond to that. But I know for Molokai, I would have no problem with those businesses. I mean the Coffees of Hawaii -- of Molokai is already expanded. They went include all the deck, they're renovating the kitchen, and that's all good, you know, because the area is so large that it's really not impacting anybody else and it's a good public use because it's now a store like -- and I'm liken this to Manae Goods & Grindz is that it's not just for personal gain but it's also a service to the community. And so I would have no problem with them renovating, expanding, or whatever.

Mr. Kalipi: Commissioner Bacon?

Mr. Bacon: Yeah, I want to -- if somebody's operating a nonconforming business in that particular area, they would be aware of that and they would know that the consequences would be that if the place burned down or something, that they would have to -- if they went ahead and rebuilt, they would have to rebuild in another area that ...(inaudible)... and the other thing is that, as far as expanding goes, I think that's what Lori was saying too is if it's an issue that ...(inaudible)...

Mr. Hopper: Importantly though, with this language, they wouldn't be treated that way. This says they're not impaired by this ordinance so they would be allowed to rebuild the way that I read it. If you say nothing, there are nonconforming use provisions that apply

to everything but it would say that if you burn down and you can't rebuild ...(inaudible)... that's the default provision. This language here sounds like the language that Commissioner Buchanan voted on, and there was a second, was that there would be -- was that there -- this ordinance, basically, doesn't affect it. It doesn't apply. So the way I would read that is that you would be allowed to expand and you would be allowed to rebuild. Basically, you'd be able to go as if this ordinance was never applied. It wouldn't apply. You've that done in other sections before. That is more permissive and broader than the existing default section and that's why I wanted to get that clarified. We're not saying you can't do that because it's been done before, but in order to change from the default position and allow these businesses to not be affected by this ordinance, once you say that, then that basically means they can continue to operate. This says as long as they -- the business continues to operate as it was operating prior to the amended ordinance being codified. So I mean perhaps you can view that as not being allowed to expand and they can't change to a different nonconforming use ...(inaudible)... this is a bit broader language than has been used in the past. That's why I wanted to get it clear to your intent so that either -- as you go by this language ...(inaudible)... suggestions which is from timeshare and the TVR section of the code or there's something else ...(inaudible)... it's always something that I wanna address, how they view it at Council, because it's something that I don't want to draft on my own and say later: Oh, you said they could expand ...(inaudible)... so I just wanna be clear about -- right now, I think Commissioner Buchanan suggested this language, which is what DeGray had, which says, "Business uses which were operating pursuant to and under law as of the effective date of the ordinance codified in this section shall not be impaired by the provisions of this section as long as the business continues to operate as it was operating prior to the amended ordinance being codified." It looks like this ordinance isn't going to affect them as long as they operate as they are, so they could do their renovations; if they burn down, it looks like they could rebuild. And as far as expansion, that's something that I think I could use a little more guidance on. But that's what I wanted to have you discuss. And I just wanna make -- it sounds like you have a different understanding from what Commissioner Buchanan had. So as a body, we can help you, you know, with that recommendation ...(inaudible)... aspect, which is very important.

Mr. Kalipi: Commissioner Buchanan.

Ms. Buchanan: No, if anybody is not clear that that is exactly what my intent was. Anybody existing now in the light industrial on Molokai will not be affected by this but the new people are. You not going be able to stack your uses in the light industrial anymore period. And Molokai is very limited on light industrial. I'd like to see more. I'd like to see our community plan get adopted and actually implemented in the future.

Mr. Kalipi: Commissioner Chaikin.

Mr. Chaikin: Yeah, I guess, you know, I'm looking at this map here and, you know, there really isn't a lot of light industrial and heavy industrial areas on Molokai. You know, but the part that, you know, has a big red flag hanging on it is that parcel across from Chevron, and the question is: What can and what should that area be used for? And, right now, it's zoned through the County heavy industrial, and that's going to mandate that that be used for heavy industrial or light industrial. You wouldn't allow -- be allowed to put any businesses of any kind that aren't industrial major across from the Chevron. Do you concur with that?

Ms. Buchanan: This is what I think - if I owned that and that zoning is now M-3, yeah, and I'm smack-dab in the heart of town now, and that designation was made way back when Maui Electric was there, if the County came in on the General Plan and said, hey, we're going to comprehensively zone you business country town. How would you like that? Who wouldn't want that? I wouldn't wanna be stuck with being able to just store stuff when I can now have a business country town designation and make all apartments -- I mean like retail business shops, like across the street at the pizza parlor. But, at that cost see, the landowner is free and clear because now Maui County is taking the lead in comprehensive zoning. That's how come nobody grumbled about the comprehensive zoning that went on when they did Kualapu'u Business Center, which never help the school when they moved in there and found out they comprehensively rezoned it and nobody knew, and then now the school, which was allowed, wasn't allowed; that kinda sucked. So I cannot see that as being a problem; more of a benefit.

Mr. Chaikin: But aren't we dealing with what is the reality today? The reality today is that that is zoned heavy industrial so if we pass this, the only thing that can be done on that parcel is either light or heavy industrial unless they get a zoning change and we've been waiting years, you know, maybe decades for that.

Ms. Buchanan: They need one zoning change anyway. Everybody need one zoning change no matter what. This being instituted or not makes no difference because if that -- you still only allowed to do stuff in M-3 right now there anyway. You cannot be doing anything else you not supposed to - in any zoning. That's how come the Veterans still don't have their Veterans Center is because they need to change the zoning to be compatible.

Mr. Chaikin: But I thought that's why -- what this whole thing is about. Right now, somebody could go across the street from Chevron and they could build, basically, any business they want right now. We're going to change it so that they can't do that anymore and they have to only build within the M-3 designation. We're going to make it only -- we're going to make industrial mean industrial.

Mr. Sprinzel: I don't think anybody's ...(inaudible)...

Mr. Yoshida: And I would say, for Kaunakakai, all of the urban area is in the SMA and the SMA requires compliance with the community plan and zoning so any development, you would have to make a finding that it is consistent.

Mr. Chaikin: Thank you for that, Clayton.

Mr. Kalipi: Commissioner Bacon.

Mr. Bacon: I guess what I was trying to get back on the as far as businesses that were nonconforming, at some point, you would want that property to go back into light industrial ...(inaudible)... if it burned down, somebody has to rebuild ...(inaudible)... use that time to put it back into light industrial as oppose to ...(inaudible)...

Mr. Hopper: ...(inaudible)... now is that -- is that the -- this will take effect on the effective date of the ordinance ...(inaudible)... what you have in the code is a default provision to basically what they're saying is just to sort of weed out nonconforming uses. If it burns down, you can't rebuild ...(inaudible)... 50 percent of the value of your renovations ...(inaudible)... if you wanna change to a different use or discontinue the use for over a year, you gotta change to a different use, and that could apply to everything ...(inaudible)...

Mr. Kalipi: So, Corp. Counsel, with Commissioner Buchanan's motion on the floor, the default provision is included?

Mr. Hopper: With what she said, as different language that DeGray has ...(inaudible)... that's this language with preexisting uses. You can propose any language you want ...(inaudible)... and that was in the motion, but this, to me, is different than the default provision. It says, well, this will not be -- this will not impair those uses so long as the business continue to operate as it was operating prior to the -- so I think as far as burning down, I think you would say, yeah, this doesn't affect you so you can go ahead and rebuild. It doesn't look like you can change the uses. This is a earlier ...(inaudible)... it's language you can use, modify, have remodified, or do away with. That's how I understand the motion.

Mr. Kalipi: Okay. Thank you. Alright, anymore discussion before we take it to a vote? Seeing none.

There being no further discussion, the motion was put to a vote.

***It has been moved by Ms. Buchanan, seconded by Mr. Bacon, then unanimously***

**VOTED:**     *to adopt the draft bill to amend Section 19.24 and 19.26 with the following recommendations: That we include the exemption of the existing uses that was proposed by ex-Commissioner Vanderbilt and that would mean that the current businesses in the light industrial now would not be affected; also, a recommendation for amendment to add quasi-public facility or quasi-public use as defined in Title 19.*

Mr. Kalipi: Motion carried unanimous. Thank you, Commissioners.

Ms. Buchanan: Can we take a break, Chair?

Mr. Kalipi: Yeah, let's take a 10-15 minute break, recess and come back into session.

*(A recess was called, and the meeting reconvened at 2:25 p.m.)*

Mr. Kalipi: Okay, we're going to call -- knowing that all the Commissioners are present, we're going to call the meeting back to order and we're going to, under Section B, Item 2, we have the Planning Director transmitting Council Resolution No. 09-21 to Lanai, Maui, and Molokai Planning Commissions. We're going to go ahead and take your opening comments and update on, Director Hunt, if you can get us ...(inaudible)...

- 2. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-21 to the Lanai, Maui, and Molokai Planning Commissions containing a Draft Bill to Amend Section 19.14.020 of the Maui County Code relating to eliminating the stacking of Residential and Apartment uses in the Hotel District. (RFC 2009/0028) (J. Alueta) (Public hearing conducted at the May 27, 2009 meeting. Commissioners: Please bring your documents.)**

***The Commission may take action on this request.***

Mr. Hunt: Thank you, Mr. Chairman. Again, this is another Council bill, Council initiated bill, and it's intended to affect hotel zones. I'm speaking for the Council or our interpretation of their motive is to preserve the hotel zones for hotels. The bill would delete uses that are allowed in the hotel district that are currently allowed in residential districts. So let me rephrase that. Currently, the hotel zone says, "Uses that are in the residential district and apartment district are also allowed in the hotel district. Some of the uses in the hotel district - pardon me - Some of the uses in the residential district includes single-family dwellings, parks, hospitals, and government buildings. In the apartment district, apartments are



allowed. So the bill in effect would eliminate all those uses I just listed from the hotel district.

The Department has concerns with the proposal to eliminate apartments from the hotel district in particular. The rationale being most hotels built today are comprised of at least a portion or some of them all condominiums. If you speak to the hotel developers, essentially, they say pure hotels are almost a relic of the past. That's probably not an absolute statement ...(inaudible)... the issue on deleting residential uses is a little more complex. The Department understands the concerns that we don't want our hotel districts being converted to single-family dwellings, particularly in light of the fact that most of these homes are second homes to the offshore market. So, in essence, we're converting our hotel zones to second home dwellings, basically. The Department supports some kind of provision to restrict that, and we'll talk about that. The concern we have about a blanket deleting -- deletion of these other uses as we believe they should be allowed in the hotel districts, for example parks and government buildings. A number of hotels that built nowadays they are part of the public process benefit ...(inaudible)... park, land for the park to construct the parks ...(inaudible)... government buildings ...(inaudible)... so the Department's recommendation is to not support the deleting apartments because we believe condominiums should still be allowed in the hotel district, and we don't support deleting parks and hospitals and government buildings except we believe that it would be better to merely craft language that says single-families are allowed in the hotel district only as an accessory use so, therefore, if they're in conjunction with a hotel, then they would be allowed. It gives some flexibility to hotel developers to be able to build a hotel and then they would have some bungalows ...(inaudible)... on the same project ...(inaudible)... So again, the Department, at this time, we're recommending that apartments not be deleted from the hotel district; that rather than deleting the kind of a global all inclusive clause "any use permitted in the residential district," we suggest that they reword that to say, "any use permitted in residential and apartment districts except that single-family dwellings shall only be allowed as an accessory use." And then because there are some single-families existing in the hotel districts on Maui, we're suggesting that language be added to ensure those existing single-family dwellings are allowed to continue.

Now, on Molokai, we recognize that it may be a little bit different, and DeGray has proposed that the Planning Commission recommend that the Council adopt the bill. Again, we have concerns with eliminating the apartment uses. In the residential district, we could support eliminating the single-families but not parks and other uses. And we can help you craft your recommendation if you'd like. We don't have a map of the zoning but we do have your community plan map that shows a number of hotel designated areas. The largest would be Kaluakoi. There's several hotel districts out there in the community plan. Maunaloa has a hotel designation in the community plan for the old hotel. Along the shore, the south shore, there's small hotel designations. The -- I guess we refer to it as the Pau Hana Inn has a hotel designation. The area . . . has a hotel designation and Puko'o has

a hotel designation. Now there may be some State community plan description on those, particularly on the south shore zoning designations that I just mentioned. So there's not a lot of hotel districts on the island particularly other than Kaluakoi. So I think perhaps from a Molokai perspective, the issue of nonconforming uses may not be a ...(inaudible)... so that's the Department's report and recommendation. Again, we're here to help you craft your recommendations.

Mr. Kalipi: Thank you, Mr. Hunt. Any questions from the Commissioners? Seeing none. Thank you, Mr. Hunt. At this time, we're going to take public testimony if anyone wants to speak on this project.

Mr. Vanderbilt: Yeah, thank you, Chair Kalipi, Members of the Commission. My name is DeGray Vanderbilt. You know, in that handout I gave you, I gave some excerpts from the Molokai Responsible Tourism Initiative, which was put together by the Molokai Enterprise Community in conjunction with University of Hawaii's Ethnic Study Department, and they did quite a good job here on Molokai. There were a lot of people involved in that. I got this from Julie Bicoy, who is head of our Molokai Visitors Association. She couldn't make it today but she agrees that timesharing would not work on Molokai because, if you read this, there's a goal for tourism to keep it different from the rest of the islands, and a lot of it is based on the kama`aina visitors and community events. And one of the excerpts from here was a calendar that had about 20 or 30 community events. The trouble with timesharing, if you're -- it's very good for a hotel investor because he gets all his money up front and leaves, and then it's just maintenance fees that are paid by the owners. But like at Kaluakoi Hotel, you could buy that property, renovate it, and timeshare the rooms for say \$10,000 a week each room, that's a half-a-million per room, times 150 rooms, that would be 75 million dollars to pay off the land; pay off the renovations costs; and then leave with 10 million, and now we got a bunch of hotel rooms that aren't hotel rooms for what our visitor industry is trying to do because there's no availability in the rooms. Julie Bicoy is going to write a letter to - she doesn't know to who - but I just talked to her today to go pick up this book, and it's really -- if you haven't read this, it's really good, and a lot of people were involved. I don't know if any of your were involved. There's a list. A lot of community members who were involved in this. There's 72 of them that gave their time and then they had the -- whatever. There's a lot of them. So, basically, that was the reason for the timesharing because, as I've said, we -- you listen to tourist and they say, oh, we love Molokai, you know, keep it like it is. But we need some more rooms and we're trying to get the Kaluakoi Hotel opened, and I hate to bring up Molokai Ranch, again but they're going to take the biggest and best deal they can. So if somebody sees the investment opportunity, like with the Kaluakoi Hotel with Father Damien and all the buzz and everything else, and they wanna do -- well Father Damien wouldn't apply because if they do timesharing, the people from Europe come in, they couldn't use the room unless they have some ...(inaudible)... the guy would buy it. And under a timesharing thing, he can pay more for the land because he's going to make a lot more bucks in the front end off of this. So

that was one reason. And again, we had a person come in here and he's building a fairly big house down on the West End. I heard from one realtor that there's somebody now looking at the two hotel sites that are zoned a Kawakui Bay with the possibility of putting a single-family estate there. Mr. Zappacosta's going to spend, Luigi said, about 10 million just to build his house. So it's -- the same thing can happen to our hotel sites. It has already happened on Maui. There's no reason why it wouldn't. There are people with a lot of money that like Molokai too and so -- so, basically, the only thing in this bill was to restrict the timesharing and to limit it to only hotels because when that hotel designation was put in, the people doing our community plan designated hotel as being: "This applies to transient accommodations which do not contain kitchens within individual units. Such hotel facilities may include permissible accessory uses primarily intended to serve hotel guests." The same language was used to describe when they put the "H" on the 2001 community plan. So the community plan knows what the intended use is and now the Council is trying to send you an ordinance where you can adopt an ordinance that sort of is consistent with what the community plan wants. And I guess as far as the single -- parks and other things, I know these properties have already been zoned. As you can see on this top page of the map, there's one, two, three, four, five, six, seven undeveloped hotel sites. All the undeveloped sites are six -- six-story hotels -- for six -- HM is six-story hotels. Now, fortunately, this is in the SMA so the community plan height restriction of two-stories would apply. But if it was outside of the SMA, the zoning would rule. But, in this case, somebody couldn't build six stories, I don't think. I think they'd have to -- they'd have to, if it's in the SMA, the community plan kicks in. The community plan doesn't kick in on any areas outside of the SMA. The zoning kicks in. So that was basically it. And when they went to get this zoning and subdivisions, they had to put in parks, they had to do the main park down there, and then there's I think a six-acre park up by Kawakui, and I don't know. If any of these hotels come in for development, they're in the SMA, they gotta come before you and I would think that you could protect public access and everything through this Commission rather than just opening it up to a lot of zoning categories that may or may not do that. So, basically, I've tried to keep it simple. The height regulations, the lot coverage is directly out of our community plan, and the pre-existing uses they're saying that if there's any residence is in there right now, like the Kaluakoi Hotel for instance, that was financed back in '78 and half the -- half the units were condominiums so they could just continue on as condominiums. It wouldn't be affected. And -- and the same with Paniolo Hale. Ke Nani Kai is built on multi-family. But the thing with condominiums, if you look at our community plan, we have five or six multi-family areas zoned at the Kaluakoi Resort so -- and then in Maunaloa we have hotel zone with The Lodge, which somebody could come in and buy up and make it a single-family residence if they wanted to unless this bill change it. We also have multi-family in Maunaloa, and we have hotel and multi-family in Kaunakakai except the hotel is -- well it's not a hotel anymore but that's because of pyramid zoning, otherwise, it would have -- if this bill get passed with no residential uses, Pau Hana would still be here today. So I think there's a good reason for doing this, especially now, and especially with Molokai Ranch willing to take anything from anybody to get out of town

so, anyway, that wasn't the nexus ...(inaudible)... Molokai Ranch, it's just to be consistent with what our community is looking for as far as planning and what our tourism industry is striving to accomplish over the next couple of decades. So thank you very much.

Mr. Kalipi: Question. I have one question. DeGray, so you support the Council's proposal of we're seeing today?

Mr. Vanderbilt: I support it, but also, making it so there's no timesharing, and also that last paragraph, pre-existing uses if there's any condominiums or apartments in the -- that exist in the hotel zone, they can continue on as though nothing happened so as not to impact any people.

Mr. Kalipi: Anymore questions? Commissioner Chaikin.

Mr. Chaikin: This is for clarification. DeGray, do you support or not support apartments in the hotel district?

Mr. Vanderbilt: I don't. I support apartments in the multi-family district as we have outlined in our community plan for apartments.

Mr. Chaikin: You know, I can certainly understand that there's a lot of benefits to hotels. They create a lot of jobs and provide a lot of flexibility for people visiting the island. I guess my concern is that we do have some experience on this island with hotels. We've had the Kaluakoi Hotel that was operating and then shutdown. They couldn't make it economically. Another group bought it, it was operating it, and then they shut it down because they couldn't make it economically. And then another group bought it and never reopened it. We've also had the Molokai Lodge that shutdown because I guess they couldn't make it. We had Kaupoa Camp out there that shutdown. We had the Kolu Camp that shutdown. We've had the Paniolo Camp - that shutdown. We had the Pau Hana operating and they couldn't make it economically and they shutdown. And then I guess some various groups tried to resurrect it and get it going and, for one reason or another, that didn't work. We had Hotel Molokai that was operating; it shutdown for awhile. Another group bought it and got it going, and now Hotel Molokai is the only one operating and, just recently, they've had some layoffs over there. I guess what I'm suggesting is that, from economic viability standpoint, hotels haven't done well on this island. And I was just wondering, there's a lot of hotel sites, what do you propose that they build on those hotel sites?

Mr. Vanderbilt: These are supposed to look out in the future and this zoning's been on the books since almost 30 years. There's some talk of going to Land Use Commission and declassify those through -- there's a provision in the Land Use Commission that if you don't use the zoning, then just give it back. I would propose hotels. I would let things play out. We've got Father Damien; we've got Mother Mary Ann coming in. There's going to be a

tremendous -- there's several people that are looking to buy the Kaluakoi Hotel. They just can't get to first base. One Belgium company that's a pretty strong company. And they see it just being almost totally full because people from Europe are -- you ask Julie Bicoy, they're getting calls all the time but they have no rooms for them and that's going to be a constant coming in and -- and if you listen to the tourists on this island, they really love the island but there's just no place for them to stay, you know, so -- you know, on Maui, I don't know whether the operation of the hotel at Kaluakoi was unprofitable or whether it was landowners that didn't care. I mean Louisiana Land had it. They were using oil money they had from a big booming oil business. Then they -- it was a play thing. They've never been in the resort business. Then they left. They gave it to the Japanese. The Japanese economy went south over there. They didn't put any money into it. They let everything go to heck. And then you had Molokai Ranch that bought it out and all they wanted to do was sell off lots at Papohaku. They didn't put any money back in. They kept promising they'd reopen the hotel. When we did the master plan, they said it would be a wonderful profitable deal. If you read the master plan, I worked on that for three years, we went through all the numbers and they said that, you know, at 70 percent occupancy, it could make a good return, and they saw that as a good thing - at least that's what they said at the time. So I think our hotel -- Pau Hana, again, I don't know what the situation is there. It seemed like it was operating well. We tried to come in, when it was closing down when the owner passed away, and it's kinda hard to run things when you're not here, and we tried to put it together as a community-based project. We had to get the rezoning because it was interim. When we went to get the zoning change, we put in a condition that it would always remain a standard hotel, kama'aina affordable hotel. The Ranch lobbied with Alan Arakawa to get that taken out of the zoning as a condition because they said if somebody can't pull this together as a hotel, we want the flexibility to sell it to anybody, and then they turned around and that's how the church got it because of the pyramid zoning. So I just think we plan for hotel. If we wanna change that around down the road when we get to our community plan, then fine. They might even wanna relocate some of these hotels. But the vision that the Molokai Visitors Bureau has is that they want a series of small hotels rather than colossal big hotels all around the island and just keep Molokai a different visitor experience from the other islands, so that's just the intent behind these things and, as I said, there's not many changes in there, and the preexisting uses would protect all these existing apartments.

Mr. Chaikin: Yeah, thank you, DeGray. I only brought that up because of, you know, the past that we've had here on Molokai. I think Director Hunt had reiterated that he thought that, with his experience on Maui, that hotels are almost a relic of the past, which means that -- you know, we can't predict the future but we can make an educated guess and, you know, with declining oil reserves I think, you know, it's going to be, you know, more challenging times ahead in terms of large numbers of visitors. I think your point, you know, with Father Damien and all that is well taken. I think we do have a unique economic opportunity here and how we take advantage of that is -- I'm not sure, but maybe we do

have an opportunity for a hotel in that situation but, just generally speaking, it seems to be the trend is moving away from hotels and different business models seem to be economically working better than just a pure hotel. Although a pure hotel is obviously good for our community, it's good for jobs and employment, but it just hasn't seem to be working.

Mr. Vanderbilt: Well, I think we're at a point now, Commissioner Chaikin, where we're going to be the only game in town. If you have a choice between timeshare and a normal hotel, you're going to always take the timeshare if you're a money guy cause it's all up front and no risk. But if you can't do timeshare here, and the visitor industry starts growing, the only way to do it is a normal hotel and the community wants it to be in scale and they'll support it, and so you have more of a captive audience. Where over on Maui, it's not necessarily, as I said before, the highest and best use of the land from a planning standpoint. It's the highest and most valuable use for the owner and timesharing is the way to go. So if you give investors an option to play monopoly on Molokai for their benefit, they'll do that. And I think the opportunity though is -- is there for us to just redevelop the hotel, and it's just too bad we lost Pau Hana Inn. I wish I'd been able to pull it together as a community-based thing but, you know, I didn't have the wherewithal to do that at that time but -- cause that meant a lot of money coming into Molokai, into Kaunakakai Town.

Mr. Chaikin: Well, you know, I just throw out the idea of short-term rentals cause, basically, what we -- I mean a hotel is one way where you have the full service; the other way is where you have a condo and you're renting them out on a short-term basis for visitors to come in and ...(inaudible)...

Mr. Vanderbilt: You may or may not. I'm at Wavecrest and there's owners that don't rent them out. There's some that are in the rental pool. But then they're coming in and coming out so you have no consistency.

Mr. Chaikin: Right, and that's one of the reasons that we're here today is to try to figure out something that makes sense, and if it's in an ordinance or it's in the zoning requirements that it has to be a short-term rental, then that's, you know, that's what they have to do.

Mr. Vanderbilt: And I think -- cause we could -- they're projecting a need for quite a few more hotel room just for Father Damien's ...(inaudible)...

Mr. Kalipi: Thanks, DeGray. Anymore public testimony? Okay, seeing none. We're going to close this time of public testimony. And at this time, I'll turn to the Commissioners if someone would like to make a motion or have continued discussions, but I would like to entertain a motion from the floor.

Ms. Buchanan: Chair, I have a question for Corp. Counsel. As with the prior bill, this bill Planning Department says that they're concerned because it would eliminate some

desirable uses, such as parks, government buildings, schools, from the hotel district because they're currently allowed under the residential district. How would we -- how would we fix that to include the desirable uses while maintaining the deletion of that residential district?

Mr. Hopper: I would simply vote to include those uses, pass the Council's recommendation and have a recommendation to retain those uses. Therefore, you would just add those uses in as permitted uses under 19.14.020. You can be pretty flexible here as far as what you want to include and what you don't in this repeal here. We're not saying we're going to repeal all of the residential and apartment uses. You can keep those and you could say I only want to repeal the ones that you ...(inaudible)... unless you say we want to repeal everything except for the following uses, or something like that, but just make that intention clear and then eventually with the draft bill, it would list those uses you want to keep, add them as listed as permitted uses and no more reference to apartment or residential districts.

Ms. Buchanan: Okay, Corp. Counsel, on Exhibit 1, Item B -- no, Item C, apartment-hotels, that would still be a permitted use. Is that correct?

Mr. Hopper: In the Council bill's version, yes. Apartment-hotels would be a permitted use.

Ms. Buchanan: So what's the difference between the definition of that, apartment-hotels, as opposed to the prior apartments that they ...(inaudible)... I don't know. What's the difference? What he just -- that's still allowed, right, the apartments?

Mr. Hopper: Yeah, the apartment-hotels says, "It means a building, a portion thereof, used as a hotel, as defined in this chapter, and containing a combination of individual guest rooms or suites or rooms with apartments or dwelling units." The definition of hotel is transient vacation rentals. So I think this differs from apartment versus apartment-hotel is that there is actually no long-term living use. You actually have to operate as a TVR. You'd have to operate as a hotel, at this by definition, you'd be an apartment-hotel and that means that you are operating as a hotel, like a TVR. That appears to be the distinction between an apartment -- and apartment is defined as one or more rooms with private bath and kitchen facilities comprising of independent self-contained dwelling units in a building containing three or more dwelling units and that would generally means long-term residential purposes. Apartment, correct me if I'm wrong, but it looks like apartment-hotel would allow these apartments with a lot of different rooms in them but you have to use it for long-term use -- or for short-term use.

Ms. Buchanan: Okay, just so I get it straight. So they taking Item A out, because it's bracketed, and then the underline ones they adding, so they adding day care nurseries as

a permitted use, greenhouses, floral and truck gardens, and then everything else -- so if we wanted to, we could also add parks, government buildings? Okay.

Mr. Kalipi: Corp. Counsel, what -- hearing the questions from Commissioner Buchanan, I don't know if you know Wavecrest but it actually started as a hotel and now it's more of a condo apartment and, in most cases, it's actually long-term people that live there ...(inaudible)... how would that fit in the mix with this proposed language? Where would that fit?

Mr. Hopper: I don't know the history. If it's one of the ones that was in the apartment district, like way back, a while ago, apartment districts used to be able to do TVRs in apartment districts. That was cut out but I think that there was a provision in that bill, interestingly, similar to what you did today, that says, "This bill won't affect people already operating as TVRs prior to the date. So people in the apartment district have the ability to not be affected by that ordinance if you were built prior to that date. So there might be simply uses that were considered grandfathered in but, right now, if you were in an apartment district, if you're zoned apartment, you can't do TVRs. This would only affect your hotel district. If that area is zoned hotel, then this could affect them, potentially, to make them nonconforming if they were using it as residential uses. It's sort of be interesting. I'm not sure how that would work. If you were using it long-term, that would appear to be a non-permitted residential use. If you're using it short-term, renting it out to people, that would seem to be an apartment-hotel. So that would be an interesting situation. Again, I don't know all the details about Wavecrest as far as its zoning and why -- if there's any long or short-term rentals but that's -- those are the possible situations. It all depends on the zoning. If that area is not zoned hotel, then this bill won't affect it at all. This is only amending the hotel district.

Mr. Bacon: DeGray's idea about the timeshare ...(inaudible)...

Mr. Hopper: Well, the bill originally came down to consider getting rid of residential and apartments. It didn't have anything on timeshare units. I don't wanna tell you you can't do that because you can be pretty flexible with your recommendations. I'm not sure if Council would look at that because they sent the bill down with residential and apartment districts, and then you put something about timeshares. If you wanted to do that, you need to craft language that way. I would say that timeshare, which is a form of ownership, is not something that's expressly permitted in this section. It's actually permitted in a different section of the code. A separate section of the code says that timeshares and TVRs are prohibited but it says they're allowed in hotel districts. That was a separate ordinance that allowed that. The separate ordinance, which says, "Timeshares are allowed in hotel districts." It's actually not in the hotel district. It's a separate ordinance. It's the same ordinance that prohibits them everywhere else. And I understand why the Council did that because rather than going into every single section and saying: TVRs are prohibited.



TVRs are prohibited. TVRs are prohibited. They passed a bill that says, "TVRs are prohibited except in hotel districts." So I would say we would have to amend that section too. I'm not saying you can't do that. But you still -- because, you know, you are looking at a hotel district and considering the permitted uses here, but it is bit off the scope of the original bill. We could write something like that. It would entail an amendment to Section 19.37, which is a separate section ...(inaudible)... hotels are permitted or timeshares are permitted in hotel districts, except on Molokai. Substantively, it would also prohibit timeshare units throughout Molokai. Hotel districts are the only place that they're allowed. Saying they're not allowed in the hotel district, that means there's no where on Molokai you could do timeshare, except perhaps potentially with a conditional use permit, which is allowed for TVRs, which also something that's prohibited everywhere except the hotel district. But that would be the case as far as outright permitted uses.

Mr. Kalipi: Commissioner Sprinzel.

Mr. Sprinzel: ...(inaudible)... condos in the hotel district?

Mr. Hopper: ...(inaudible)... Planning Department. You're allowed to have apartment-hotels if you would get rid of this. So you could have apartments in which you would rent out short-term. I'm not sure how it would affect condominiums thought. It looks like the residential long-term uses, you couldn't have those if you are zoned hotel. If you're in an area that is hotel, it does not look like you can have any dwelling units or ...(inaudible)... unless you can exempt any preexisting condominiums or residential uses from the hotel district. It would probably say residential or condominium uses, looks like it would not be permitted after this. I'd like Planning to comment, you know, in case I'm wrong.

Mr. Sprinzel: ...(inaudible)...

Mr. Hopper: It would be nonconforming uses.

Mr. Sprinzel: ...(inaudible)...

Mr. Hopper: Well nonconforming uses are allowed to continue on. If you want to avoid any problems, like taking away people's vested rights. A nonconforming use ordinance is sort of written in a way where it needs to sort of move those out over time, which is like if it burns down, you can't rebuild; if you stop that use for a year, you can't re-continue that use. Frankly, what's interesting is the condominium situation where you would need to only use it for short-term rentals. You could not use it for long-term uses. Again, how much ...(inaudible)... on this because I haven't reviewed this, signed off on the bill yet, but that's the issues that we'd wanna look at. Again, you could exempt those situations from this bill or you could have the regular nonconforming use provisions apply to them, which means they'd have to weed that use out.

Mr. Sprinzel: ...(inaudible)...

Mr. Kalipi: I'm just thinking of, you know, like Wavecrest was a hotel, it became an apartment and somewhat moving on a condo than more of a apartment, then you got Kaluakoi Villas, they're also considered -- there's a few residents down there that now lives there long-term, and of course we got Ke Nani kai and Paniolo Hale ...(inaudible)... I really think the preexisting -- if we put the language for the preexisting ...(inaudible)... I guess Corp. Counsel was asking the Department if they could comment or answer the question.

Mr. Hunt: What was the question again?

Mr. Hopper: I'd like Commissioner Sprinzel to ...(inaudible)...

Mr. Sprinzel: ...(inaudible)...

Mr. Hunt: You could have preexisting or you could have language that recognizes and allows the pre-existing condominiums to continue. If you want to allow future condominiums, then you need to retain the apartment provision. The way that our County zoning codes work is there is no provision for condominiums but to apartments being allowed in the hotel district, that seems -- we interpret that as being a condominium, so I'm not sure if you want just to protect the existing condominiums or do you wanna allow future condominiums. If you want to allow future condominiums, then retain the hotel provision, and then, my understanding you wanna prohibit timesharing, add a provision that prohibits timesharing.

Mr. Sprinzel: ...(inaudible)...

Mr. Hunt: What I said earlier was what I'm hearing from the hotel developers is they virtually have to have condominiums or timeshares, and a lot of condominiums -- all that means is that the owner owns the unit. Most of the owners still rent them out. They put it into a rental pool, not all of them. Timeshares are a little bit different. Timeshares are viewed more as ...(inaudible)... or if you're looking for economic development in a community, the communities tend to support timeshares ...(inaudible)... but even having said that, timeshares are still subject to rental pools. It's not unusual to have someone rent out a timeshare because the person didn't take their one week or two weeks so then they just put it in a rental pool. Now the rental pool is smaller because the occupancy is higher and that occupancy is what can be an attractive economic development. If you look at our hotel industry right now, the sector that is performing the best right now is the timeshares ...(inaudible)... but, right now, a lot of people ...(inaudible)... not such a bad idea, we probably don't want all our hotels as timeshares but ...(inaudible)...

Mr. Kalipi: Not -- I'm not a really big fan, I don't know too much about timeshares, but I'm really hesitant to put more road blocks on people that come to Molokai that is just going to come for a week or two weeks, spend some money, and get out of there, and yet someone's going to make some money. But, as I said, I'm not sure, you know, that's probably one of the guys that I would like to come in - people that would stay a week and go, or two weeks and go, but that's just -- but, okay, saying that, anymore discussion? If not, I'll get a motion or can I ask the Planning Department again, I'm sorry, I wasn't -- caught this but what is our time frame to respond to this -- to this ordinance?

Mr. Yoshida: Mr. Chair, as it states on the second sentence in the first paragraph of the May 18, 2009 memo report, the deadline for the Planning Commissions to transmit comments back to Council is July 8, 2009.

Mr. Kalipi: Thank you. Commissioner Buchanan.

Ms. Buchanan: Chair, I have a question because I travel, and I like to stay at certain places. Definition is what's bugging me. I like to stay at hotels that have, and even a resort, that has a room that is defined as a suite or one-bedroom, not necessarily defined as a condominium, but we all know that that includes a kitchen, a sink, maybe a refrigerator, maybe a stove. As the definition says now, a hotel would not have that in there. Is that correct? You shaking your head so ...(inaudible)...

Mr. Hunt: That's correct and we would rely on the apartment provision that are allowed in the hotel districts to provide that type of amenities.

Ms. Buchanan: Well that would be my problem because I'm in favor of this bill but I still like to stay at a hotel that has those amenities, and I see that as amenities, not as an apartment living place because when you live someplace like that, it's much different than if you're there for two or three days. So I have to dwell on that for a while, but I am in favor of this with some recommendation to allow for any other uses, and so I'm not sure.

Mr. Hopper: As far as apartment-hotel, the definition of apartment hotel says, "A building or portion thereof used as a hotel, as defined in this chapter, and containing a combination of individual guest rooms or suites or rooms with apartments or dwelling units." So would apartment-hotels be allowed to have a kitchen? It says that the -- there would be rooms with apartments or dwelling units. And apartment says, "self-contained dwelling unit in a building containing three or more dwelling units." It also says, "private bath and kitchen facilities." So I'm not sure how we review that. Do you have any idea?

Mr. Hunt: I think, under the apartment-hotel definition, it could be allowed in units with a kitchen, but the problem that we see in apartment-hotels is the phrase or clause that says it would operate as a hotel. We believe that would be problematic if somebody just wanted

to buy condominium unit and use it long-term. It sounds like -- it sounds like there would be a prohibition on living there longer than six months ...(inaudible)... frankly, we haven't permitted any apartment-hotels that I'm aware of. They're either hotels or now they're pretty much condominiums ...(inaudible)...

Mr. Kalipi: So then, in Molokai, then I would see some of the things that we see as apartment-hotel because when I look at Wavecrest, it originally was a hotel but it died when it was hotel and then it became more of an apartment and some kinda -- maybe even some timeshares, I don't know, but I know there's some long-term residents living in there. It used to ...(inaudible)... we've got Kaluakoi Villas operating in the same fashion. It started as a hotel but died as a hotel, and now became somewhat semi-residential area, and the condos at Ke Nani Kai ...(inaudible)... just commenting. Trying to take this all in. Commissioner --

Mr. Chaikin: I just need clarification on the apartment-hotel, Corp. Counsel. Just on that apartment-hotels, is it referenced short-term or long-term or --

Mr. Hopper: I think what the Director was saying is used as a hotel and hotels are defined as TVR, which is a short-term rental. It's gotta be rented off for a period of less than ...(inaudible)...

Mr. Chaikin: So that's what you can do. Does that mean that you cannot do long-term? Just cause it said you can do something, does that mean you cannot do the --

Mr. Hopper: I think that's the Director's interpretation. I, honestly, have not taken a lot of time to review and consider this, but it does say it's used as a hotel, as defined in this chapter, and containing the combination of individual guest rooms or suites or rooms with apartments or dwelling units. I think it's a difficult definition ...(inaudible)...

Mr. Hunt: We would say that there's a possibility that somebody's going to argue that you can't live in there long and you can't say in there longer than six months because it has to be a short-term rental. But again, we haven't had a lot of experience with this apartment-hotel because it's kind of unclear and we don't want to hang our hat on the apartment-hotel clause. We suggest to just leave apartments in there that provides for condominiums which can still be short-term ...(inaudible)... if Molokai wants to prohibit timeshares, there's a slight difference. You could do that. It's not the same as a condo. I would caution you about the economic impacts of that ...(inaudible)...

Mr. Kalipi: Thank you, Director Hunt. Commissioners, I know DeGray wants to chime in again. If it's alright with your guys, we would allow it. DeGray, you wanna chime in?

Mr. Vanderbilt: You know, as far as the -- again, we have something in our community plan that talks about the development of hotels. We have all these hotels sites - even on the East End, you know, there's some major hotel sites where all these hotels were planned back -- six-story hotels planned back in the '60's. I don't know what the status there has been but the -- in the community plan, we have, I'm just looking here, there's one, two, three, four, five major condominium sites at the resort. So the idea was that there be condominiums and there be hotels and we really - I can't impress upon the point that our community plan says, you know, you develop a hotel based on the employment needs of Molokai, so just take the Kaluakoi Resort and if it went condos or something and they hired a few people and the whole act and then if you needed a regular hotel and our unemployment -- I mean if we opened the Kaluakoi Hotel, our unemployment rate will be the lowest in the State, which would be a great thing and -- but I just think that we really are going to need pure hotels and I think we are different than Maui because if that's the only alternative, they can work and the -- the Kaluakoi Villas, Mr. Chairman, they were -- became condos at the outset, that's how they financed the hotel. They were sort of on a shoestring back there. But I would hope that we could keep the pure hotels and just like you're going back and forth now, apartment hotel versus that, that -- I'd just take that out because it's getting into that gray area again and it's up to the interpretation of the Planning Director or somebody else and we're trying to make these more simple. And, as I said, we have condo sites and multi-family sites in Maunaloa, Kaunakakai, a lot of them at the resort. So thank you. Thanks for letting me come back.

Mr. Kalipi: Okay, Commissioners, more discussion or I'll entertain a motion from the floor. Commissioner Sprinzel.

Mr. Sprinzel: ...(inaudible)...

Mr. Kalipi: Okay, any second? ...(inaudible)...

Mr. Chaikin: Sorry, I didn't understand the motion.

Mr. Kalipi: Commissioner Sprinzel.

Mr. Sprinzel: That we accept the resolution with the provisions that ...(inaudible)...

Mr. Kalipi: Commissioner Sprinzel, I got the no timeshare one but what is the other provisions, I'm sorry, for the record? Is that the one -- I heard you say preexisting but I'm not sure what you're working off of.

Mr. Sprinzel: ...(inaudible)...

Mr. Kalipi: Okay, I'm sorry. I'm working off of Commissioner Chaikin's paperwork. Basically, I'm looking at the -- my understanding of the motion is to accept the draft bill with the provisions that they add that no timeshares and the existing permitted use, there's a whole bunch of stuff on there actually, so I'm going to ask, Commissioner Sprinzel, what specific parts are --

Mr. Sprinzel: Mainly, that there are only hotels, which would be avoiding timesharing ...(inaudible)...

Mr. Kalipi: Okay, Commissioner Chaikin?

Mr. Chaikin: Well, yeah, I understand that he wants to support the Council and what they're putting forward but you wanna make some adjustments as outlined by DeGray but add your own, which means no timeshares or maybe put no timeshares in that.

Mr. Sprinzel: He's already put it in.

Mr. Chaikin: Okay, so he made a number of different recommendations in here and some of them have to do with lot size or setbacks. Are you looking at those as well?

Mr. Sprinzel: No, only the timeshare. Everything else ...(inaudible)... just the provision where there are no timesharing allowed.

Mr. Chaikin: So for clarification, is there apartments allowed or no apartments? Cause then DeGray's, it says no apartments.

Mr. Sprinzel: Apartment-hotels are allowed under any use condition. It says apartment-hotels.

Mr. Hopper: Just for clarity, rather than adopt this language, if you recommend that we prohibit timeshares in Molokai, and I can draft that for you.

Mr. Sprinzel: Perfect.

Mr. Hopper: In addition, it sounds like you also said adopt the Council recommendations with this timeshare -- with the prohibition of timeshares in the hotel district. If you wanna add any other nonconforming use provisions, that needs to be in the motion too.

Mr. Kalipi: Okay, so he's going to keep it like that. So I think we're clear. So I'm going to ask if there's a second on this motion?

Mr. Chaikin: I'll second it.

Mr. Kalipi: Okay, second by Commissioner Chaikin. Discussion? Go ahead Commissioner --

Ms. Buchanan: I can go after Commissioner Bacon.

Mr. Kalipi: Commissioner Bacon.

Mr. Bacon: So I understand that this does not include apartments?

Mr. Chaikin: It includes apartment-hotels.

Mr. Bacon: Which is different from apartments, and ...(inaudible)... saying that the Planning Director or Planning Department is requesting that we retain apartments.

Mr. Sprinzel: I'm happy to amend it to include apartments as the Planning Department's ...(inaudible)...

Mr. Hopper: I recommend that you make and vote on an amendment to the motion then. In addition, you did talk a bit about nonconforming uses. That's not part of your original motion the fact that you added ...(inaudible)... now you have the motion which was stated, you need to make an amendment, second, vote on the amendment ...(inaudible)...

Mr. Kalipi: Okay, you made an amendment to the motion. Anybody second that amendment? Commissioner Bacon ...(inaudible)... if you're all in agreement, signify by raising your right hand to vote that we offer to amend the motion, not to accept, but he's saying just to amend it according to Corp. Counsel.

Mr. Hopper: I understood the amendment to be you are now allowing apartments. That's the only thing that I ...(inaudible)... that's your proposed amendment.

Mr. Sprinzel: My actual words were "condos" originally but "apartment" seems to be the official word.

Mr. Hopper: What you have is: a. Any use permitted in residential and apartment districts. I guess what Jeff Hunt is saying is that you want to have that read: Any use permitted in the residential and apartment districts, and cut out, "any permitted in residential districts." It would still allow apartment districts but it would no longer allow residential districts. If that's the intent. I just wanna be clear.

Mr. Hunt: I think that would be the best way to accomplish what the motion is proposing.

Mr. Kalipi: Okay, just to move this along, why don't we take a vote --

Mr. Sprinzel: I'm not the lawyer ...(inaudible)...

Mr. Kalipi: No, no, let's just take a vote. Let this one die. And then come back with a fresh new motion on the floor so we don't have to go back ...(inaudible)..., okay? So I'm going to take a motion on the -- I'm going to take a vote on the floor, you know, and just say you're talking out loud, and let this one die, the original motion that is set on the floor, then Commissioner Sprinzel can then make a new motion that would clear everything, okay? So, no, I'm recommending that we don't vote on any of the amendments just to stop the confusion. We're not going to vote on the amendment. I'm going to let him reestablish a new motion on the floor. Everybody understand what we're doing?

Mr. Sprinzel: Let Counsel, please, put it into words for me.

Mr. Hopper: You said condominiums, you meant apartments. What you can always do is amend your main motion to put in apartments if that's what you want. If that's what you want, make that clear, go ahead, and you wanna really follow the parliamentary procedure. Motion to amend to say that the motion should now be whatever it was, which was to include to leave apartment districts in as a permitted use ...(inaudible)...

Mr. Sprinzel: Yeah, cause they're already there.

Mr. Hopper: They're in there now. The Council's proposal is to eliminate them and residential uses.

Mr. Sprinzel: And we don't want to eliminate because they're already on Molokai.

Mr. Hopper: The Planning Director -- if that's what you want. You have your original amendment, as I understood it, was to keep apartment districts in here and -- I thought that's what you said. If it's not, then you need to clarify what your original language was if you wanna amend your amendment.

Mr. Sprinzel: I'm trying to make it so that the condos at the moment exist are allowed to stay.

Mr. Hunt: Just -- just the existing ones, not future ones?

Mr. Sprinzel; No. Yes, so we can put future, I mean to not stop the ones that are already there and to allow anybody that builds a hotel to sell off to individuals.

Mr. Hopper: Then see leaving apartment districts in here by the Planning Director would allow future ones to come in the hotel districts if you leave it in as a permitted use ...(inaudible)... a difference would be coming up with language for nonconforming uses



where if you're operating as an apartment today, and this comes, this would not affect it. Those are two different things. Leaving apartment districts in here as a permitted use will allow future apartments to come in. And it's up to you which way you go with that. I understood that to be your original motion because that's what the Planning Director, I think, had advocated before ...(inaudible)...

Mr. Sprinzel: As I said, we wanted to -- I wanted to propose what the Planning Department wanted ...(inaudible)... and grandfather condominiums ...(inaudible)...

Mr. Kalipi: Okay, there's actually two ...(inaudible)... because you want, my understanding is you want your preexisting, right, so whoever is existing now can operate; however, in the future, that you don't want no apartments or condos. You want it separate from hotels versus a condo. So then you can't, if I follow you, you can't agree with the Planning Commission's recommendations because then they want to keep apartments in there. And according to what you just said, you're going to allow preexisting condos and apartments semi apartment/hotels currently, which is now, Wavecrest and so forth, however, in the future, you wanna keep it separate, hotels and apartments separate.

Mr. Sprinzel: I said the hotel -- anybody coming in to build a hotel will want to sell off condominiums as they do nowadays. So ...(inaudible)...

Mr. Kalipi: So wanna leave the apartment/condo in the hotel language?

Mr. Sprinzel: Yes.

Mr. Kalipi: Okay, which is the original from the Planning Director. Okay, so that's the amendment.

Mr. Sprinzel: Does anybody has it down?

Mr. Kalipi: Okay, so with the amending language --

Ms. Buchanan: No forget his provision about timeshares.

Mr. Kalipi: With the provisions of timeshares. Anymore discussion?

Mr. Chaikin: Yeah, now I don't know what the motion is that we're -- or the amendment is. Yeah, I subscribe to your first idea that we let it fail, and we start all over again, and we come up with a fresh good clean motion and go from there.

Mr. Kalipi: We can move two ways since we're headed in -- one, we first vote for the amendment. If we agree with the amendment, then we move on with the new amended

language. Two is we take a vote -- well, he's already made a motion to amend this so we'll just take that vote to amend the amendment right now. Okay? The amendment is, as he just stated, that he's going to, the language, he's going to accept the Planning Department's language and the provision that he's going to make is no timeshares, that he's adding to it.

Mr. Hopper: The only amendment was to put in the apartment district, right? The original motion, as I understood it, was to approve Council's recommendation with the timeshare prohibition. Then the second motion was to amend that to leave in apartment districts; that's the amendment that you're voting on right now.

Mr. Kalipi: Okay, so now, all in favor to accept the amendment signify by raising your right hand. If not, the amendment dies.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Sprinzel, seconded by Mr. Bacon, then***

***VOTED: to amend the original motion and leave in apartment districts.***

***(Assenting: J. Sprinzel)***

***(Dissenting: N. Bacon; L. Buchanan; S. Chaikin)***

***(Excused: N. Leong; M. Pescaia; T. Waros; D. Williams)***

***MOTION FAILS.***

Mr. Kalipi: Okay, nays have it. The amendment dies. We have the original proposal before us now. Discussion?

Ms. Buchanan: So that was seconded by Vice-Chair Chaikin? Okay. So maybe I can cut us off for another 15 minutes to discussion because I going tell you right now I am not voting in favor of that motion. So you not going have quorum.

Mr. Kalipi: Okay, so let's take the vote, let it die, and somebody can make a motion ...(inaudible)...

Ms. Buchanan: Unless you still want discussion on that motion.

Mr. Kalipi: Not if it's not going to lead us anywhere. Unless other people want discussion of something that is not going to lead us -- okay, seeing none. We're going to take the original motion, which Commissioner Sprinzel said.

There being no further discussion, the motion was put to a vote.

***It has been moved by Mr. Sprinzel, seconded by Mr. Chaikin, then***

***VOTED: to adopt the Council's recommendations with the prohibition of timeshares in the hotel district.***

***(Assenting: J. Sprinzel)***

***(Dissenting: N. Bacon; L. Buchanan; S. Chaikin)***

***(Excused: N. Leong; M. Pescaia; T. Waros; D. Williams)***

***MOTION FAILS.***

Mr. Kalipi: The nays have it. The motion dies. Okay, I will entertain a new motion on the floor from Commissioners.

Ms. Buchanan: Okay, I'll make a motion so we can have a discussion again, which will include all of Commissioner Sprinzel's thoughts. So my motion is to concur and adopt a draft bill to amend Section 19.14 and with the following from Exhibit 1, Exhibit 1 is the bill, a bill for an ordinance amending Section 19.14. If you look Section 1, 19.14.020, in bolded letters, Permitted uses. Within hotel districts, the following uses shall be permitted - A. They taking A. and B. out, okay. So this is not going to be permitted, but Item C. will be permitted, apartment-hotels, TVRs, kitchenette, you know, what Corp. Counsel had read to us under the definition of apartment-hotels. So nobody's taking that out. It's included, okay. And all the rest, as you can read down, adding day care nurseries, greenhouse, so on and so forth, restrictions on accessory uses, other accessory uses - that's a lot. It does not specifically say timeshares. And the reason why I am not going to vote in favor of deleting timeshares is because of all the discussion that we just had for the past hour-and-a-half where we cited Molokai's economy, I think, in a worse case scenario for a hotel, a timeshare can be guaranteed money, and that's their fallback if they have bad marketing, if the economy crashes, or we have another 9-11, at least you have a guarantee that this family's going to be here for weeks, family B is going to be here for two weeks, family C is going to be here for another week, and so on and so forth. I don't even wanna allude to Molokai hotels being converted to condominiums because they all problematic. Ke Nani Kai, Wavecrest, Molokai Shores. They all cannot find one steady resident manager. You know why? Complaints. Cause you have condominium owners living in a hotel. They're never going to be happy because that's your home, it's your condominium, you live there 24/7, and here you get people coming over for graduation parties, for the weekend, they wanna jump in the pool, they wanna stay up all night, but this is your home. It's not a hotel, okay. So always going have that problem with Wavecrest, Ke Nani Kai, Paniolo Hale, and so on and so forth. The worse thing Kaluakoi could've done was sell the cabanas in the front to condominium owners because your most exclusive high-end rentals are now like

Turtle Bay Hilton where they're owned by condominium owners. The same people that build the houses at the Ritz-Carlton on the golf course are not your year-around people who going live there forever and ever and that's just the type of living they want but it's not conducive for Molokai. That's why I say keep it separate. By adopting this bill as is, the apartment issue is still in there, and the reason why I like it that way is because I wanted to take a vacation in two weeks, so I've been on Hotwire. I have a baby; a two-year old; a seven-year old; my husband; my daughter. I cannot afford. I like stay in one place that has a kitchen; that has a washing machine or whatever, stacked washer and dryer. But I'm only there for three days and then I'm out of there. Condominiums. If you're going to rent them out, there's a minimum requirement night stay. Maybe -- the minimum I've seen is four days with a \$150 cleaning fee on top of that. That's the standard in Hawaii, okay. I know this. I search this stuff everyday. So I like the fact that the hotel has a flexibility to include a kitchenette. But I no want people staying and living in my hotel or let alone it be a condominium because it's a headache for management, and a hotel should be a hotel. The think the worse, not the worse, if anything is wrong with our community plan is it's reference to the West End of Molokai where they designated Molokai as a place for hotels and condominiums but they failed to address the water issues. Why would you wanna put your big development in one area where you know no more water and not make provisions for that? That's stupid. That's the only point I have to argue with my community plan. But if you take DeGray's first page Exhibit A, this thing here, okay, and you look at this, and you see all the zoning, A-2, H-1, HM, you can have -- it's a urban development. It really is a urban development on the West End where there's no water. This is current zoning. I can go over there and build six stories if I like today on Kaiaka, of course it's in the SMA, but I still have the zoning. So I'd like to -- I have to withdraw my first motion and amend my motion, at this point, if you no mind cause I forgot that -- can I do that? There is a motion on the floor.

Mr. Kalipi: Commissioner Buchanan, there's a motion on the floor.

Ms. Buchanan: Oh yeah, his motion, yeah? Okay, well that motion. We have a discussion, right? Okay.

Mr. Kalipi: We're still in discussion.

Ms. Buchanan: So that's my discussion.

Mr. Kalipi: Friendly amendment.

Ms. Buchanan: I cannot be in favor of that --

Mr. Kalipi: So it doesn't have to be friendly.

Ms. Buchanan: Huh?

Mr. Kalipi: You can offer a friendly amendment or not. It's a friendly amendment ... (inaudible)...

Ms. Buchanan: Oh, no, no, no, no. I don't want to interfere with Commissioner Bacon's but I just saying that I cannot vote in favor of that because the timesharing is not an issue for me. To me, that's a safety belt, okay, for hotels because those people are not staying there more than a week or two weeks, not this 180 days where you going go into permanent residency. So that's my discussion.

Mr. Kalipi: Okay, Commissioner Buchanan, I would have to say I agree with Commissioner Buchanan so we know, you know, where people are headed to. What I can kind of agree on is this leaving in the parks and the government language in there, and I'd like to agree, if it helps us to move this along, because preexisting condos and apartments uses are here. I like to use like Hotel Molokai, Molokai Shores, we've got Wavecrest, and the different condos that are out there. So I think the intent was to get residential out of the hotel districts and we wanna get away from the gray areas by continuing to allow this. So, you know, I'm just sharing my thoughts in this discussion is that I like the parks and the government in there, I like preexisting; I don't like the crafting language for single-family accessory use to then support the developers to, if you going build hotels, you can build small kind, you know, individual semi looking like residential but not really residential condo units and stuff like that. So if we wanna keep it simple, my thoughts is hotel is hotel, and condo would be condo, and residential would be residential, but we're all mixed up right now, and so, you know, we don't wanna penalize those who -- so we're going to accept the preexisting but we're going to try to make our way back to keeping things separate, and then maybe we tackle timeshare on a different battle, either that -- you know, we were so stuck with the timeshare thing, that surely we're going to have to probably defer this to the next meeting. I don't know what the Commissioners want. But I think I'm just sharing what I could agree on. Anymore discussion?

Mr. Chaikin: I'll take a stab at this. I think where we're at right now, and the way I understand it, there's a motion on the floor, and the motion has been seconded. This motion allows for apartments to be legal, it allows for apartment-hotels to be legal, it allows for park and government buildings to be in it, and it also allows for timeshare. Did you put timeshare in your -- oh yeah, no timeshare. Right, no timeshares. So that's what's on the floor right now. Well, single-family is going to be deleted according to the -- to the Director's recommendation unless it's an accessory use. So, basically, what I've heard disagreement on right now, I think, is the timeshare issue. Is there any other issues that are in disagreement right now?

Ms. Buchanan: No, but for clarification, Commissioner Bacon is concurring with the Planning Department and not concurring with the County Council's draft bill recommendation. That is the motion on the floor and I will not vote in favor of that.

Mr. Chaikin: For clarification, what is -- what part of that are you objectionable to?

Ms. Buchanan: Exhibit 1, right up in the front row. The whole -- the whole thing is permitted uses in the residential and apartment districts. That's why I said it's much easier and much cleaner to agree with the draft bill because apartments is already included but it's a limited use of apartments, it's not the same definition that they -- that they're trying to get rid of in A.

Mr. Chaikin: So you're in favor of apartment-hotels, but not apartments? Okay.

Ms. Kalipi: I would have to agree with Commissioner Buchanan. The language I adopt from the discussion was the preexisting -- preexisting condos, hotels, apartments, so forth and so on. I truly believe we cannot penalize them because of, you know, the change or the cultural change, the cultural shift that we've seen in the hotel industry, however, we wanna stop the change from, you know, getting more gray or black between them and we wanna keep the line divided where residential be in residential, and hotel be in hotel, and condos be condos, and they align with the zoning and the Molokai plan or even the Maui master plan. So I would have problems with allowing single-family according to the Department's recommendation. I also would have problems with allowing ongoing apartments in hotels as we're moving forward, but I don't have a problem in saying that those that are preexisting can continue in the similar language if they went burn down or whatever, one year they can ...(inaudible)... I don't know what that language said but, specifically, but I would be able to accept that.

Mr. Bacon: I have a question then also. The interim areas that are basically surrounding the hotel districts ...(inaudible)... You can do apartments in interim?

Mr. Kalipi: No, I don't think so. A special conditional permit and other things but it would have to be zoned a certain -- Commissioner -- excuse me, Planning Director Hunt.

Mr. Hunt: I've been informed the interim zone land around those hotel districts in Kaluakoi is that that's where the golf course is right now. In answer to the question, in the interim district, I don't believe it allows multi-family uses.

Mr. Hopper: It allows duplex dwellings, single-family and duplex dwellings.

Mr. Bacon: So that this -- this area, the hotel area around there, how would you get that resort type area to be able to have condominiums for people who would wanna live year around ...(inaudible)...

Mr. Hunt: It is right now under the hotel zoning. That's what this whole issue is about.

Mr. Bacon: So if we're eliminating it, say we went with this Council bill, then there would be no area, like this A-1 building or --

Mr. Hunt: A-1 is apartment and that would allow year-round, and also there's some rural zoning. So the outlying areas would allow for long-term uses.

Mr. Bacon: It would just seem like there are people who would like to live in that kind of an area where they have easy access to the golf course ...(inaudible)...

Mr. Kalipi: Thank you. And mind you again, the preexisting would keep everything in place and again, if we adopt the preexisting, Corp. Counsel, I know DeGray mentioned earlier too that there are areas that are designated condo areas? DeGray, come up to the mike, please.

Mr. Vanderbilt: Just to address Commissioner Bacon's concern. Commissioner Bacon, just to address your concern, the community plan, all it needs to be is implemented, which it wasn't. This was from 1984 and 2001. But we have multi-family. We have single-family, sites for single-family. We have one, two, three, four sites for multi-family that are undeveloped right now right along the golf course so somebody could build -- would come in and build a condominium. He'd have to get the zoning changed from -- oh no. Is it interim?

Mr. Kalipi: I think he did -- Jeff said that the zoning around Kaluakoi is interim.

Mr. Vanderbilt: Well, but our community plan thought that there would be people that want to live in a condo so we put condo areas and kept the condo condo, the single-family single family, and the hotel hotel because we knew there were people that wanted to live different lifestyles or enjoy different experiences but didn't want to be conflicting with each other, and there have been, as Commissioner Buchanan -- some pretty ugly conflicts out at Ke Nani Kai, and so things have happened so --

Mr. Kalipi: Thank you, DeGray. Okay, Commissioner Bacon, you were saying that you wanted to possibly amend your motion?

Mr. Bacon: Yeah, I could amend mine to I think probably this timeshare thing, which ...(inaudible)... to not include that, and amend it to cover all existing apartment and condo type units and ...(inaudible)...

Mr. Hopper: I just wanna make sure that somebody either the department or somebody is writing these motions, where typically it's the planner assigned to these ...(inaudible)... I don't know what the Commission's procedure is, but I just don't want this to get all lost and you have to go back to the minutes to try to figure out ...(inaudible)... it's helpful to have these written down and someone read it back, it's typically the staff planner.

Mr. Kalipi: Okay, so, Nancy, are you writing these down? Please help us, Planning Department, to write this.

Ms. Buchanan: Actually, Chair, I need a point of order, yeah. I was just going to call for a point of order. You're either against the draft bill or you're for the draft bill with amendments or recommendations. That's the way I see it. So it's up to Commissioner Bacon. He can withdraw and make a new motion, he can amend his motion, or he can -- you know, you either for or against.

Mr. Kalipi: He's amending I believe, correct me, Commissioner Bacon, you recommended to accept with the provisions of the Planning Department and then you added no timeshares. And now he's still, originally, now he goes back to amend his motion to cross out timeshares and -- but he wants it -- or add preexisting, and then he was saying something else about apartment and hotel or apartment-hotel.

Mr. Bacon: It would be easier if I just withdraw my original motion and then start all over again?

Mr. Kalipi: Yeah. Okay, taking from Corp. Counsel, yeah, it's not a problem to withdraw your motion.

Mr. Bacon: Okay, I withdraw my motion.

Mr. Kalipi: Thank you. I will entertain a new motion from the floor. Do you withdraw the amendment also?

Mr. Bacon: Yes.

Mr. Kalipi: Can you withdraw both the amendment and the original motion? Okay. I'll entertain a new motion from the floor. Okay, Commissioner Bacon.



Mr. Bacon: I'll try again. Okay. I recommend that we go with the resolution and allow preexisting apartments to continue and that we allow single-family dwellings to -- as an accessory use.

Mr. Kalipi: That's your motion? Anybody second that motion? Okay, seeing none. Motion dies. Anybody else wanna make a motion?

Ms. Buchanan: I'll try again so we can get a ...(inaudible)... okay I have a motion. My motion is to concur with the Maui County Council's draft bill to amend Section 19.14 of the Maui County Code relating to stacking and adding a recommendation to add parks and government buildings, and also recommend to have a clause for preexisting uses that will be exempt, and that would mean that the condominiums that we have now will not be affected by this but future development will.

Mr. Kalipi: Okay, motion on the floor. Do we have a second?

Mr. Chaikin: I'll second that for discussion.

Mr. Kalipi: Okay, second. Discussion?

Mr. Chaikin: Yeah, I guess the only thing that, you know, I bring up for discussion is whether or not we wanna allow apartments as an accessory use, which means that if they build a hotel, that they're allowed to build some condos on the side, or you can't build condos as a primary use but you could do them as an accessory use, and I bring that up because we've heard testimony here today from the Director that almost all developments are going that way these days is they really have to have some condos on the side or something to make it economically viable. So I just throw that out whether or not we would want to allow condos as an accessory use.

Mr. Sprinzel: I would think that was in the proposal.

Ms. Buchanan: If you look at on Page 2 over on Exhibit 1, under Item 19 -- I mean 16, 19, and I, I think that addresses that issue because other accessory or service establishments, which supply, so this is a hotel, primarily for hotel guests, uses shall be approved by the commission as conforming to the intent of the title. Then it says, "Restrictions on accessory uses: All such hotel and apartment-hotel buildings in which such accessory uses shall be permitted and allowed shall contain more than 20 rooms, and such accessory uses shall be permitted and allowed only as an adjunct to, and as part of, the main building and no other." Corp. Counsel, wouldn't that allow for what Chair Chaikin is saying?

Mr. Hopper: I think you'd still wanna list apartments as accessory uses. If you go down the list of accessory uses, and it doesn't say apartments, I mean you've got the Council

change that says, "Accessory buildings, the use of which is customary and incidental, usual, and necessary to that of the main building or to the use of the land." If you wanna make it clear that apartments are accessory uses, then write in apartments under that section. I would say it clearly. You might wanna look to the Planning Department and Planning Director on this issue.

Mr. Hunt: I would agree the -- I don't believe the accessory uses speaks to condominiums but it speaks to more businesses that you see now in the hotel lobbies and perhaps a travel service and concierge and a small little store and flower shop. Whatever is commonly seen in hotels, not a type of ...(inaudible)...

Ms. Buchanan: Planning Director Hunt, where can we build a condominium? In what district?

Mr. Hunt: Right now you can build a condominium in the hotel district.

Ms. Buchanan: What else -- where else can I build it after this goes into play?

Mr. Hopper: You need to consider a condominium in this too. I mean you can own a bunch of houses as a condominium property. It doesn't have to be like a building apartment or ...(inaudible)... apartment building where you rent out short-term to people or I mean I think that helps Jeff answer to clarify ...(inaudible)...

Mr. Hunt: A condominium is actually a split of ownership. You commonly refer to condominiums as hotel zoning but then you start into the language or term. You could actually condominiumize, and on Maui they're doing that, people condominiumize lots that have homes on it. It's just the homes are split. So, in this case, a condominium is a multi-family. In the hotel district, it would be multi-family that has separate owners, each unit is separately owned, and then it's short-termed out ...(inaudible)... In the apartment district, you can do the same thing, condominiumize apartments. You would have to look at what the apartment district allows ...(inaudible)... I believe it does ...(inaudible)... Mike, can you pull up the definition of apartments and see if it looks condominiums would be allowed in the apartment district?

Ms. Buchanan: I don't know what you're getting -- Chair Chaikin, you just want condominiums to be allowed to be built in a hotel district?

Mr. Chaikin: As an accessory use. So they have to build a hotel and then, as an accessory use, they can build some units off the side where people can do, basically, that's what they did at the Kaluakoi, and the condos out there seem to be working. There's actually people there who are living in there. They're being utilize. Whereas the hotel is shutdown. So I'm just trying to get something that seems workable from an economic

viability standpoint, getting away from what's ideal or what seems to be, you know, the best might not viable from an economic standpoint; that's why I just throw that in there.

Mr. Kalipi: Well, then I wanna chime in to say that I kinda like where Lori was heading is even if you build a hotel now with the same language, but what would stop a developer or would it be permissible to have some condominiums built right next to it or do we have existing language that say, no, you cannot develop a condominium unit next to the hotel?

Mr. Hunt: In the existing laws, you can put your condominiums next to the hotels in the hotel districts. If this bill was passed, you would have to build your condominiums on the apartment ...(inaudible)... Kaluakoi Villas next to ...(inaudible)...

Ms. Buchanan: Corp. Counsel, you was asked to give the definition of apartments. Either we never even discuss the requirement to build a hotel under work force housing that hotels have to -- they earn credits; then they trade earned credits. I don't think -- I don't know if the Commissioners are familiar with this but if you build a hotel, you have to make concessions for your employees, and then this gets into a big game of trading credits and stuff because you have to supply x-amount of housing for your employees, they don't have to be next to your hotel, but someplace, even if you make a deal with another developer, and that is really tricky and it's coming back, I think, to bite Maui County. Is it, Planning Director Hunt, this whole trading credits and work force housing? I think this is more than -- than we're looking at. I think I like the motion the way it is because I think developers can build outside the hotel district ...(inaudible)...

Mr. Kalipi: I guess I also have a question for the Planning Director. I guess there might be but it's kind of a huge project in Maui or even for discussion, have you seen a developer come in the last amount of years say I wanna build my hotel adjacent to it would be like bungalows or condo units?

Mr. Hunt: I think there's been some. We get a mixture. I mean the idea that all our hotels are condominiums is -- that's not accurate. It's more that it's an important element. I'm aware of some hotels that are pure condominiums but that shouldn't be ...(inaudible)... say all hotels nowadays are. But I'm not aware of any pure hotels ...(inaudible)...

Mr. Kalipi: So then you know, again, for argument sake, the discussion was saying preexisting capture those types. I mean, you know, we don't even see pure hotels coming as proposals saying I wanna build a hotel and condo units on the side. So that was just my point to say, you know, just to take on building a hotel is a chore in itself let alone and say to bring in a hybrid hotel and a condo ...(inaudible)... In some sense, even if you're going to come in with a condo next to the hotel, is it appropriate to say that they can close or adjacent to the hotel before a zone change to apartment or duplex to build such condo units adjacent or near the hotel?

Mr. Hunt: They could. It just makes it more complex. The comments we heard from the hotel people is they want flexibility in the design. There seems to be -- that flexibility seems to be consistent with the hotel projects that we've gotten where they offer a mix of products for their clients. I don't know if these are a greater attraction ...(inaudible)... Before I move on, let me correct or I wanted to clarify something. In the apartment district, there's multi-family and you can't do short-term so you could do a condominium, which the apartments would be owned separately. They'd have to be long-term. That's the whole prohibition on short-term rentals outside the hotel districts.

Mr. Chaikin: I just throw out I think the reason that the developers go for condos cause it allows them to get money to do their projects. If it's strictly a hotel, they have to put out huge sums of money and they get nothing back, maybe just some. They can, you know, rent the rooms out but it's a long haul. When they have condos on the side, then they get the money up front and they can fund the hotel. It allows the whole -- you know, it makes it more viable. And I certainly can understand that we wanna keep all of these hotel areas, you know, hotel. I mean that makes the most amount of sense. But is anybody ever going to build on them I guess is the question.

Mr. Vanderbilt: I apologize but, you know, there's been people trying to wanna reopen the Kaluakoi Hotel as a hotel. They can't get anybody. Commissioner Buchanan said there's a water problem on the -- on the West End, so if you're going to allow timesharing on the other hotel sites, I would recommend leaving the Kaluakoi as a pure hotel because that's the closest thing to reopening. There's an impetus to reopen it because of Father Damien. It'll provide a 150 jobs and if you allow timesharing, some guy could come in, pick it off, sell it to timesharing for 75 million dollars, walk away, and then we'd have all condominiums there and no room to put visitors coming in to see Father Damien or doing our ohana events or anything else. So I would protect that from the timeshare guys. If they wanna go to the other sites and build single-family timeshares, well then they gotta come to this Commission for approval. But I'd sure protect the existing Kaluakoi Hotel from it becoming 100% timeshare and have no available rooms. And if somebody builds condos on the hotel, there's no requirement to have a restaurant or bar or anything else and so that's -- that's ripe to be reopened and it can be reopened and just because the Maui hotel people say something, what the hell they know about Molokai. I mean have them come over here and show you the economics. I don't -- I can find people that would tell you, including Peter Nicholas, that it would be a bonanza that hotel. I mean he'd put that in writing - if it could just get open. Now I don't know if I would believe him but -- anyway, that's -- I'd just protect our Kaluakoi Hotel.

Mr. Kalipi: Thank you, DeGray. Clayton, what is the time limit? I know we got a couple other things but we're not going to -- it seems like we're not going to make it.

Mr. Yoshida: We have to wrap this up by 4:30. We have to catch a 5:45 plane so we need time to kind of put away all the equipment.

Mr. Kalipi: Okay, thank you. Commissioner Chaikin.

Mr. Chaikin: Yeah, we have a motion on the floor. The motion's been second. We went into discussion. I threw out some ideas of whether or not we wanted to put condos as an accessory to a hotel. You know, I'm not steadfast in that. I just threw it out for discussion purposes. So, you know, for me, it's not a deal breaker. I'm, you know, willing to go along with the way the motion as it is right now. It does allow for apartment-hotels in there, which is pretty close to a condo. So, you know, I'm good with the motion as it stands on the floor right now.

Mr. Kalipi: Okay, anymore discussion? Anybody know what the motion was? No, I know what it was. I'm just asking if everybody else knows. Okay, for the floor, I'm going to restate the motion, you tell me if I'm wrong, then we're going to take a vote. The motion was to concur with the Maui County Council of the change in the draft bill adding to it would be parks and government buildings, also we would then draft preexisting uses, those condos or apartments or so forth, different uses in the hotel district would then be kind of grandfathered in and we'll work out the language with Corp. Counsel, and that's it. That's the motion on the floor. Okay, nodding her head is Commissioner Buchanan. So we're going to take the vote.

There being no further discussion, the motion was put to a vote.

***It has been moved by Ms. Buchanan, seconded by Mr. Chaikin, then unanimously***

***VOTED: to concur with the Maui County Council's draft bill to amend Section 19.14 of the Maui County Code relating to stacking and adding a recommendation to add parks and government buildings, and also recommend to have a clause for preexisting uses that will be exempt.***

Mr. Kalipi: Okay, so motion passed unanimous, and silence or not raising your hand would be, as Corp. Counsel signify, as being yes. Okay, so motion carried. Comment, Commissioner Chaikin.

Mr. Chaikin: Yeah, I just I wanna comment on DeGray's, you know, thoughts about the timeshare. I think that's something that, you know, is kind of left hanging in the balance and I think that's something we can deal with at the community plan level, maybe we can put something in there dealing with timeshares.

Mr. Kalipi: I'm going to call up Clayton because we're not going to get through all of this. Maybe there are certain points that we need to actually discuss before our next meeting. So, Clayton, help us channel into the last minutes of our agenda.

**E. COMPLETION OF WORKSHOP NO. 2 STARTED AT APRIL 22, 2009 MEETING**

- 1. Powers and Duties**
- 2. Rules of Practice and Procedures**
- 3. Land Use Regulatory Framework in Maui County**
- 4. Zoning**
- 5. Molokai Country Town Business Design Guidelines**
- 6. Chapter 343, HRS, The EA/EIS Process**
- 7. Meeting Schedule**

Mr. Yoshida: First, we can defer the workshop to another meeting when we will be able to accommodate that, maybe the -- right now, it looks like the July 8 meeting because the June 24 is pretty full. Then maybe Commissioners Leong and Waros will be able to attend also as they haven't gone through the -- all of these orientation sessions.

**F. COMMUNICATIONS**

**Status report on the processing of the Molokai Veterans Center SMA Assessment and Change in Zoning Applications. (The initial report was made at the December 10, 2008 Molokai Planning Commission meeting.) (N. McPherson)**

*The Commission may decide what future action it wishes to take regarding this matter.*

Mr. Yoshida: As far as the Veterans Center, again, as we announced earlier, the public hearing on the zoning change is scheduled for your next meeting on June 24.

Mr. Chaikin: Clayton, yeah, on that are we going to have -- are there going to be two hearings or are we going to hear the museum part of their application?

Ms. McPherson: Just a second. Nancy McPherson, Staff Planner. We have a number things going for the Veterans right now. I am intending to complete the assessment and bring an SMA minor permit forward to you at the same time as the change in zoning because that's what the Veterans have requested. But they also have several other options. One of which is that the interim is being amended for -- to allow public/quasi-public and that may be approved fairly soon in the, you know, within the next month or two.

Again, that's not a done deal but that's in the works. They also, you know, again they have the change in zoning and that will be going, based on your recommendations, that would go to the Council. So the thinking is -- you know, we're in continuous discussion with the Veterans but, you know, I am going to propose that they consider, you know, that they consider all the options and so far, at this juncture, they're requesting that we bring the SMA minor forward based on the museum use with the caveat that we all know that, ultimately, what they really wanna do is there full-fledged Veteran Center and that would be best accomplished either with the amended interim zoning or with the change in zoning to light industrial, and with some of the recommendations that you made today regarding the stacking bills that that would prevent any avenues being closed off there as well.

Mr. Kalipi: Thank you, Planner McPherson. Clayton?

#### **G. CHAIRPERSON'S REPORT**

- 1. Improvements to the Planning Commission's and Planning Department's service to the community.**
- 2. Molokai SMA maps and Molokai zoning maps.**

Mr. Yoshida: So I don't know if the Chair wants to, under the Chairperson's Report, wants to deal with those items. As far as the Item 2, the Molokai SMA maps and zoning maps, that was assigned and today is the deadline to produce the maps by Commissioner Buchanan and we would report that in discussing this with our Long Range Division, they're not able to produce individual maps for you for today. We are looking at various options. One is to get better quality maps to Nancy. Another option that we're looking at is possibly putting these maps on the County website so they would be accessible to the public. But we still have to have further discussions with our Long Range Division so we'll keep the Commission posted as to which option.

Mr. Kalipi: Okay, let us go on record to just say shame you and the long term planners, and this is -- I guess it's not foreign because we've been going through this for several years now, but we're doing all that we can to continue to say that this helps us to continue to make the appropriate decisions or to keep things in perspective and without these maps and following these parcels, it actually gives us information in bits and pieces and it kind of hampers on with decisions going back and so forth. So just -- I know the past chair had made a shout out. This could be a broken record today and it's going to continue for who knows how long, but again, shame on the Department for not being to give us appropriate tools to make such decisions. I know some of the Commissioners wanna chime in, give them another deadline or whatever, I'm all good with that. Commissioner Buchanan or Commissioner Chaikin.

Mr. Chaikin: Yeah, I guess I didn't get why you couldn't get us the maps. I mean is there a printing problem with the printer or, specifically, what is prohibiting you by printing out some maps and giving them to us?

Mr. Yoshida: I think it's partially sort of the allocation of resources for the Long Range in producing maps and how often they have to -- may have to produce maps if there are change over in commissioners and will it affect other commissions to be able to produce maps ...(inaudible)...

Mr. Chaikin: Because you did have a map today for M-1 or for the industrial, which you could have like printed out and given to us but it's kind of limited. It only has the industrial area. I mean, you know, I mean let me just say, we did get some zoning maps, and we had to rely on a member of the general public to provide those for us, but I hope that the Planning Department can raise to the level of DeGray's service and be able to provide those for us. I think DeGray should apply for a job at the County - he does a great job.

Mr. Kalipi: Okay, Commissioner Buchanan.

Ms. Buchanan: No, I was just maybe making a recommendation and a motion that this Commission go on strike until we get our maps, and then maybe we see how fast Long Range can move then. Okay, you know, I'm sorry but I do GIS everyday, and all I know is it's as simple as getting a layer on an Arc GIS and map, and if I had that layer, I'd make my own maps. To be honest, I haven't looked for it so maybe there is an SMA layer for Maui County within the State system. If it is, I'll find it. I was thinking maybe that it was more of a legal - they didn't want to be bound by a map that was in a draft stage, and we recognize that, but, seriously, you know, I don't know how -- I know Commissioner Chaikin is really frustrated so we can go on strike.

Mr. Kalipi: And, you know, thank you. But these are just comments and frustrations, nothing personal, but again, our position is I really think this will help us to keep continuity with the decisions that we make and really evaluate the zoning, evaluate the SMA properties. It would really help us in following along through the process so I don't know what else to say, but thank you, Clayton, for hearing the frustrations.

Mr. Chaikin: And, you know, there's the zoning maps and there's also the SMA maps, and when you have a Commission like that, who has the final authority in a certain area, they should know where that area is. I mean it's, you know, all commissions should have a map of the SMA so they know where their boundaries are.

## **H. DIRECTOR'S REPORT**



1. **Further discussion on changing the start time of the Molokai Planning Commission meetings due to the changed flight schedules to Molokai**  
*The Commission may act to change the starting time of the meeting.*

Mr. Yoshida: Moving on. Moving quickly through the Director's Report. Under Item 1, we would just say that airlines are changing their flight schedules as of June 15 so we're taking an earlier flight now, at 5:25 ...(inaudible)... we're switching airlines because the airlines moved their flight back to 6:30, 5:45 to 6:30. So we have to -- we probably can stay till about 4:15.

Mr. Kalipi: Okay, Commissioners --

2. **Pending Molokai Applications**
3. **Closed Molokai Applications**
4. **Agenda Items for the June 24 Meeting:**
  - a. **MR. LARRY G. HELM, Commander of the MOLOKAI VETERANS CARING FOR VETERANS (KOA KAHIKO) requesting a Change in Zoning from the County Interim District to the M-1 Light Industrial District for the construction of the Molokai Veterans Center and related improvements on the 16,182 square foot property situated at TMK: 5-3-001: 070, Kaunakakai, Island of Molokai. (CIZ 2009/0001) (N. McPherson)**
  - b. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance to Amend Chapter 19.62 of the Maui County Code to adopt Special Flood Hazard Area regulations in accordance with the National Flood Insurance Program. (F. Cerizo)**
5. **Public Hearing on Amendments to Chapter 19.08 of the Maui County Code regarding the Residential District scheduled for July 8.**
6. **Public Hearing on the Molokai Federal Credit Union SMA application scheduled for July 22**

Mr. Yoshida: We circulated our list of pending and closed Molokai applications and we've listed the possible agenda items for the next three meetings, noting that we have the public hearing on the Veterans Center on the 24<sup>th</sup>, we have a public hearing on our requirements amendments to the residential district on July 8, and we have a public on the Federal Credit Union SMA application on July 22. So we have a public hearing for each of the meetings for the next three meetings.

Ms. Buchanan: The credit union is SMA minor or major application?

Mr. Yoshida: For the?

Ms. Buchanan: Credit union.

Mr. Yoshida: The credit union is a major because it's more than \$125,000.

Mr. Kalipi: Okay, Director Hunt.

Mr. Hunt: Just a couple issues. One is we can -- we are working on the zoning maps so it's not like we're not working on those, it's just a complex issue. I don't wanna get into the details. One other item I wanted to mention, it's not on the agenda, but it's real quick and important. I just wanted to let you know that at the Planning Committee Meeting of the Council on February 23, they were discussing the super store bill, and I mis-correctly stated that this committee or this Commission supported that bill, and it was just due to case and my preparation I didn't the review the record as thoroughly as I should have. It was an honest mistake and there was no motivation for us to report in support of the bill but ...(inaudible)... it wasn't anything mischievous. We'll correct that at the next meeting when they take it up, probably in July. I just wanted to let you know that that happened and we'll correct that.

Mr. Kalipi: Thank you, Director Hunt. Clayton, you had anything else because we're going to defer the rest of the agenda items to -- Commissioners, I think we really wanna wrap it up. Maybe you can talk to us or, you know, catch us right after cause we're going to actually shut this off for the day. Okay, so we're going to call this meeting to order -- to a close. Thank you very much and we'll see you back in a couple of weeks.

I. NEXT REGULAR MEETING DATE: June 24, 2009 (Wednesday)

J. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 4:30 p.m.

Submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

## **RECORD OF ATTENDANCE**

### **Present**

Joseph Kalipi, Chairperson  
Steve Chaikin, Vice-Chairperson  
Nat Bacon  
Lori Buchanan  
John Sprinzel

### **Excused**

Napua Leong  
Mikiala Pescaia  
Teri Waros  
Don Williams

### **Others**

Jeff Hunt, Planning Director  
Clayton Yoshida, Planning Program Administrator  
Nancy McPherson, Staff Planner, Molokai  
Michael Hopper, Deputy Corporation Counsel